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APPENDIX

Supreme Court of the United States

~~OCTOBER~~ TERM, ~~1970~~ 1971

NO. ~~952~~ 70-36

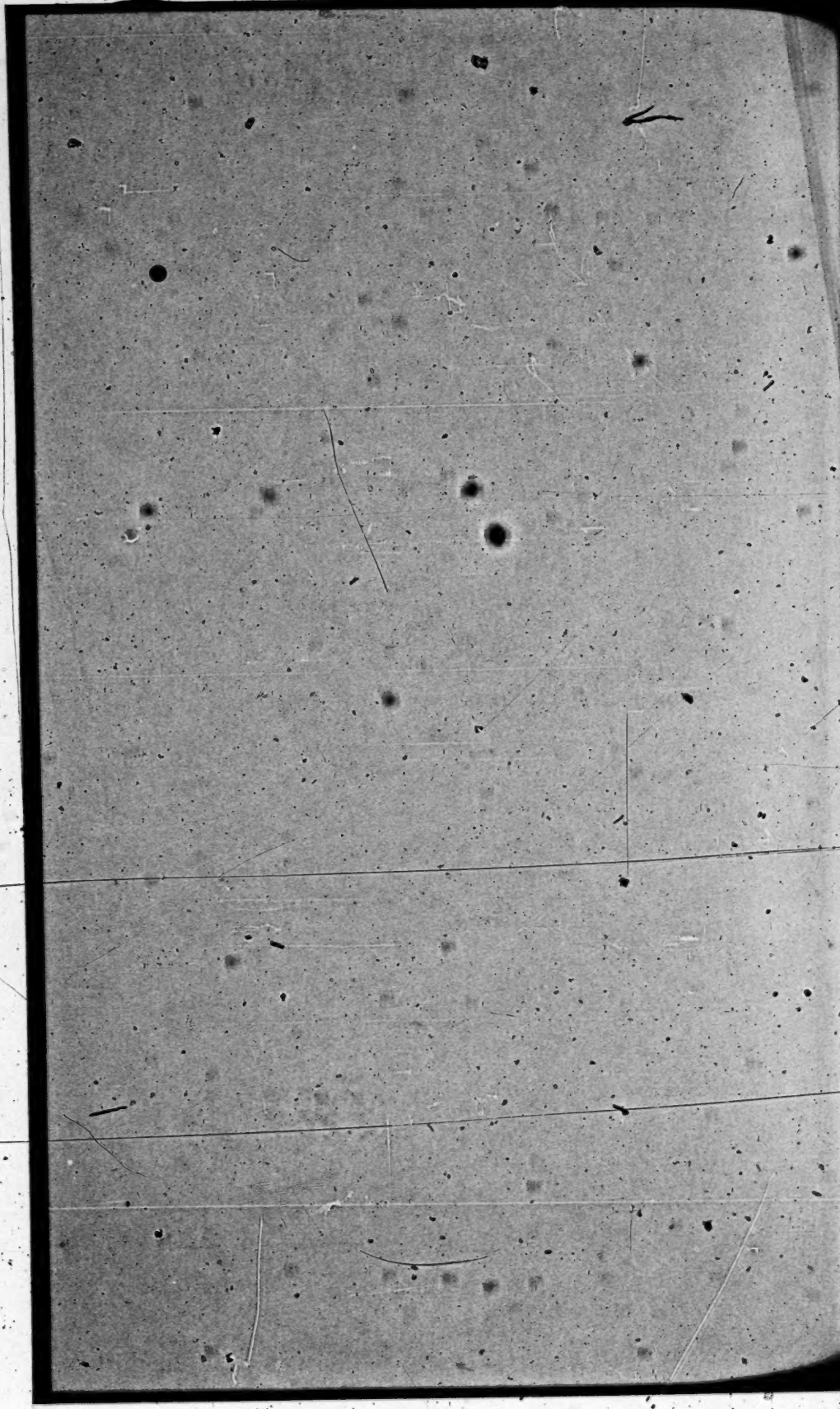
CHARLES R. PERRY, et al
PETITIONERS,

VS.

ROBERT P. SINDERMANN, Etc.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 9, 1970
CERTIORARI GRANTED JUNE 14, 1971



TRANSCRIPT OF RECORD
VOL.I

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

NO. 952

CHARLES R. PERRY, et al
Petitioners-Appelles,
versus
ROBERT P. SINDERMANN, for himself
and all others similarly situated,
Respondent-Appellant.

Petition for Writ of Certiorari to the
United States Court of Appeals for the
Fifth Circuit

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DOCKET ENTRIES

A: PROCEEDINGS IN DISTRICT COURT

May 22, 1969	—Filed Complaint.
May 23, 1969	Issued Summonses and copies to U. S. Marshal, Pecos.
June 4, 1969	—Filed Summonses for all 10 Defendants, all executed 5-26-69.
June 11, 1969	—Filed Motion for More Definite Statement.
June 11, 1969	—Filed Motion to Strike.
June 11, 1969	—Filed Original Answer of the Board of Regents of Odessa Junior College.
June 11, 1969	—Filed Original Answer of Dr. Jack Rodgers.
June 11, 1969	—Filed Original Answer of Defendants Perry, Pettit, Elliott, Ocker, Kirk, Harding, Mason, Pavlicek and Zant.
July 14, 1969	—Filed Affidavit in support of Motion for an Injunction.
July 15, 1969	—Filed Order Denying Petition for Temporary Restraining Order. Parties notified by copies.
July 18, 1969	—Filed Motion to Dismiss by Defendant Board of Regents of Odessa Junior College.

July 18, 1969 —Filed Motion for Summary Judgment of Defendants Charles R. Perry et al.

July 28, 1969 —Filed Plaintiff's Affidavit in support of Motion Opposing Summary Judgment.

July 24, 1969 —Filed Plaintiff's Motion Opposing Defendants' Motion to Dismiss, with brief.

July 31, 1969 —Filed Plaintiff's Motion for Leave to Amend Pleadings.

July 31, 1969 —Filed Brief in support of Plaintiff's Motion above.

July 31, 1969 —Filed Order Granting Plaintiff Leave to Amend Complaint. Parties notified by letter.

July 31, 1969 —Filed Plaintiff's 1st Original Amended Complaint.

July 31, 1969 —Filed Appendix "G" to Complaint above.

July 31, 1969 —Filed Affidavit in support of Appendices A, B, C, D, E, F & G to Amended Complaint.

August 1, 1969 —Filed Defendants' Brief in support of their Motion for Summary Judgment.

August 1, 1969 —Filed Plaintiff's Motion opposing Defendants' Motion for Summary Judgment, with Brief in support thereof.

August 4, 1969 —Filed Order Denying Defendants' Motion to Dismiss and Order Granting Defendants' Motion for Summary Judgment.

Parties notified by copies.

August 15, 1969 —Filed Plaintiff's Notice of Appeal.

August 15, 1969 —Filed Cost Bond on Appeal.

August 15, 1969 —Filed Plaintiff-Appellant's Designation of Contents of Record on Appeal.

B: PROCEEDINGS IN UNITED STATES COURT OF APPEALS

August 10, 1970 —Opinion of United States Court of Appeals for Fifth Circuit.

September 9, 1970—Petitioner's Motion for Rehearing overruled by United States Court of Appeals for Fifth Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

ROBERT P. SINDERMANN, for himself and for all others similiarly situated, Plaintiff, VS. CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, BETTY DOOLEY, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK, JOE C. ZANT, all individually and as Members of the Board of Regents of Odessa Junior College, and DR. JACK RODGERS, Individually, and as President of Odessa Junior College, Defendants.	CIVIL ACTION Filed: May 22, 1969 NO. MO-69-CA-54

COMPLAINT

NOW COMES the Plaintiff, through his attorneys, Warren Burnett and Richard J. Clarkson, and as and for a cause of action, on behalf of himself and on behalf of all who are similarly situated, and against the Defendants, alleges the following:

I.

That this Court has jurisdiction in this cause over all parties under 42 U.S.C., Sec. 1983, and 28 U.S.C., Sec. 1343.

II.

That the Plaintiff, ROBERT P. SINDERMANN, is a citizen of the United States and a resident of Odessa, Ector County, Texas.

III.

That the Defendants, CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, BETTY DOOLEY, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK, JOE C. ZANT, are citizens of the United States and residents of the City of Odessa, Ector County, Texas, and can be served with process at the following addresses:

Charles R. Perry
Peters & Field Building
800 Central Drive
Odessa, Texas

William L. Pettit
2326 Field
Odessa, Texas

Guy Elliott
2500 E. 8th Street
Odessa, Texas

James F. Ocker
2709 Fair Oaks
Odessa, Texas

Betty Dooley
2926 Chisum
Odessa, Texas

G. Kirk Harding
5003 Kingston
Odessa, Texas

R. C. Mason
1415 Emerald
Odessa, Texas

Otto Pavlicek
2318 N. Grant
Odessa, Texas

Joe C. Zant
J. C. Zant Engineering Co.
Country Club Estates
Odessa, Texas

IV.

That the Defendant, Board of Regents of Odessa Junior College, is a body corporate duly organized and existing under the general laws of the State of Texas, having the power to sue and to be sued in its corporate capacity, Vernon's Annotated Civil Statutes of Texas, Art. 2815h, Sec. 20, which governs and manages the branch of higher education in the State of Texas known as Odessa Junior College, and may be served by serving Charles R. Perry, President of said Board of Regents, at Peters and Field Building, 800 Central Drive, Odessa, Texas.

V.

That the Defendant, Dr. Jack Rodgers, is President of Odessa Junior College, which college is

located in Odessa, Texas, and that the said Dr. Jack Rodgers, by and through the authority delegated to him by the Defendant Board of Regents, directs, governs and manages the said college. Said Defendant, Jack Rodgers, may be served, both individually and in his capacity as President of said college, by process of service at his office at Odessa Junior College.

VI.

That the Plaintiff was retained by the Defendants as a lecturer to teach Government in the Department of Social Sciences at Odessa Junior College for the school year 1968-1969, and the Plaintiff performed and continued to perform those duties pursuant to such retention.

VII.

That although Odessa Junior College has no tenure system, the Administration of the College acknowledges the fact that faculty members have "permanent tenure" until the time that their contracts are not renewed. (cf. Appendix "A", page 3). That on October 16, 1967, the Coordinating Board Texas College and University System adopted guiding principles designed to aid Texas colleges and universities in evaluatng the conditions of academic freedom, tenure, and responsiblity that prevail on each campus. The Plaintiff has tenure within the guiding principles established by the Coordinating Board, being a teacher in Texas' higher education institutions for ten (10) years, with four (4) of those years being at Odessa Junior College. (Cf. Appendix "B", page 1-2).

VIII.

That the Texas Coordinating Board's statement on academic freedom, tenure and responsibility was published in the bulletin of the American Association of University Professors with that organization's approbation. (Cf. Appendix "C").

IX.

That there have been campaigns in the Permian Basin (Midland-Odessa and surrounding areas) by the local citizenry in support of bills before the Texas Legislature to either elevate Odessa Junior College to a four-year status, or else to build a separate senior college in the Permian Basin. The Plaintiff has been vocal in his expressions of opinion in support of the movement to elevate Odessa College to a four-year status, and such expressions have been in opposition to the public position taken by the Defendant Board of Regents, and Defendant, Dr. Jack Rodgers. (See Appendix "A").

X.

That in a press release issued by the office of Defendant, Jack Rodgers, on May 13, 1969, it was stated that one of the reasons for not renewing the contract of the Plaintiff was his association with the "Committee to Elevate Odessa Junior College." (See Appendix "A").

XI.

That the Plaintiff is State President of the Texas Junior College Teachers' Association, and was invited to appear in that capacity before the Texas Senate's State Affairs Committee by State Senator

Oscar Mauzy of Dallas, Texas, and the Chairman of the State Affairs Committee, William T. (Bill) Moore, on proposed academic freedom legislation. (Cf. Appendix "D").

XII.

That in a press release issued by the office of Defendant, Dr. Jack Rodgers, on May 13, 1969, that one of the reasons for the Plaintiff not being retained for the academic year 1969-1970 was his unauthorized trip to Austin, Texas, to testify without receiving the college Administration's approval. (Cf. Appendix "A").

XIII.

That those reasons for the Plaintiff's contract not being renewed as found in paragraphs X and XII above are the only ascertainable reasons for such action by the Defendants, no formal charges having been sent to the Plaintiff by said Defendants, are in nowise sufficient cause for the dismissal of a faculty member with tenure as established by the Coordinating Board Texas College and University System, in its statement of October 16, 1967, namely:

> "Professional incompetence, moral turpitude, or gross neglet of professional responsibilities." (Cf. Appendix "B", page 2).

XIV.

That ten members of the faculty of the Social Science Department of Odessa Junior College signed a statement attesting to the fact that the Plaintiff is a totally competent person professionally, and that nothing he has said or done has, in any way, dero-

gated from his competence in the classroom as a lecturer in Government at the college. This is all but a few members of his Department. (Cf. Appendix "E").

XV.

That the Plaintiff was advised on May 19, 1969, by the Defendant, Dr. Jack Rodgers, purporting to act under due authority, that his contract would not be renewed for the year 1969-1970. (Cf. Appendix "F").

XVI.

That the Defendants, or their agents, refused to give any reasons to the Plaintiff for their decision to not retain him as a member of Odessa Junior College faculty for the school year 1969-1970, and also that the Defendants did not offer the Plaintiff an impartial hearing into the merits of such decision.

XVII.

That the reason for such decision by the Defendants, or their agents, was to retaliate against the Plaintiff for the Plaintiff's expression of opinion.

XVIII.

That the Defendant's decision not to retain the Plaintiff was not based upon good faith on their part.

XIX.

That the decision of the Defendants is a denial, a violation, a restraint, and a deprivation of the Plaintiff's right to free speech under the United States Constitution.

XX.

That the decision of the Defendants was not made under ascertainable and definite standards governing the Defendants in making this decision.

XXI.

That the Defendants, or their agents, have intimidated and harassed the Plaintiff and other Odessa Junior College faculty members similarly situated because the Plaintiff and those so situated have exercised their right to free speech in a way critical of the Defendants.

XXII.

That the conduct of the Defendants as described above in this Complaint has made the Plaintiff and those Odessa Junior College faculty members similarly situated reluctant and fearful to express their opinions.

XXIII.

That such decision of the Defendants has caused, and unless such decision is restrained from enforcement, will cause the Plaintiff damages to his professional reputation and standing for which there is no adequate remedy at law.

XXIV.

That such decision of the Defendants has already caused the Plaintiff to suffer actual damges to his reputation, to his ability to obtain similar employment in other colleges in the State of Texas, damages in the amount of Two Hundred Seventy-Five Thousand Dollars ($275,000.00).

XXV.

That such decision of the Defendants was retaliatory in nature and not based upon good faith, and that they, therefore, should be liable for punitive damages in the amount of Two Hundred Thousand Dollars ($200,000.00).

XXVI.

That because the actions of the Defendants necissitated that the Plaintiff retain attorneys in order to obtain his United States Constitutional rights, the Defendants should be held liable for reasonable attorneys' fees.

XXVII.

That the Plaintiff brings this action on behalf of himself, on behalf of many of the Odessa Junior College faculty members too numerous to join herein, who have been intimidated and harassed by the Defendants, or their agents, for expressing their opinions, and on behalf of many Odessa Junior College faculty members too numerous to join herein, who have become fearful and reluctant to express their opinions because of the conduct of the Defendants as described herein.

WHEREFORE, the Plaintiff demands the following relief:

(1) A judgment that the decision of the Defendants that the plaintiff not be retained as a member of the Odessa Junior College faculty for the school year 1969-1970, is in violation of the Plaintiff's rights, and in violaton of the rights of those similarly situated, under the First and Fourteenth Amendments to the United States Constitution.

(2) That the Defendants are to grant to the Plaintiff a hearing on the reasons for his dismissal in substantial compliance with the recommendations set out by the Coordinating Board, Texas College and University System as contained in the attached Appendix "B", namely: The Defendants should give formally written charges to the Plaintiff. Presentation of such charges should provide for (a) a written response to the charges by the faculty member, if he wishes a hearing; (b) opportunity by the faculty member to exercise his right to be represented by counsel of his own choosing, to have a hearing before a regularly elected faculty committee, to confront and cross-examine witnesses, to know the name and statement of a witness who, for extraordinary reasons, does not appear at the hearing, to respond orally to charges made against him, to have findings and recommendations made on each of the charges, and to be given a complete transcript of the hearing, including the findings of the faculty committee; (c) a review of the case, if essential, by an appropriate reviewing body — the review to include the findings and recommendations of the hearing committee, the opportunity of the faculty member and University representative for oral argument, the return of the proceeding to the hearing committee, if the original recommendations are not sustained, the study of the hearing committee's reconsidered findings and recommendations, and a rendering of a final decision (which should be written in the rare case in which the hearing committee is overruled).

(3) A judgment that the failure of the Defendants to prove the Plaintiff with an impartial hearing as to the merits of their decision of May 6, 1969, was arbitrary, capricious, and contrary to the Plaintiff's

rights, and the rights of those similarly situated, under the First, Fifth and Fourteenth Amendments to the United States Constitution.

(4) A judgment that the refusal of the Defendants to give reasons for their decision was arbitrary, capricious, and in violation of the rights of Plaintiff and those similarly situated, under the First, Fifth, and Fourteenth Amendments to the United States Constitution.

(5) A judgment that the failure of the Defendants to make such decision under ascertainable and finite standards was arbitrary, capricious, and in violation of the rights of Plaintiff and those similarly situated, under the First, Fifth and Fourteenth Amendments to the United States Constitution.

(6) An order of the Court directing the Defendants to retain the Plaintiff in his position as a member of the Odessa Junior College faculty for the year 1969-1970, at the same level of responsibility and function as per the retention for the school year 1968-1969.

(7) That a date be set on the court's docket for a trial on the damages alleged in this complaint, and

(8) for such other and further relief as may be equitable.

LAW OFFICES OF WARREN BURNETT
P. O. Box 3707 - Odessa, Texas

By: s/Richard J. Clarkson
Richard J. Clarkson

ATTORNEYS FOR THE PLAINTIFF

PLAINTIFF DEMANDS TRIAL BY JURY.

APPENDIX "A"

Mr. Robert P. Sindermann became a member of the Odessa College Faculty in September, 1965. He previously had taught at San Antonio College, San Antonio, Texas. Mr. Sindermann had completed most of his course work for the Doctorate in Government at the University of Texas. At the suggestion of the President of the College, Mr. Sindermann was made "co-chairman" of the Social Science Department, with an increase in pay of $300.00 per year.

As soon as Mr. Sindermann became co-chairman, he immediately began "circularizing" members of his department with lengthy letters. Unfortunately, none of these lengthy letters have been retained in his personnel file.

Because of his "addiction" to letterwriting, and because of his apparent unwillingness to accomodate himself to procedures of "lines of authority" and "administrative authority," he was dropped as co-chairman of the Department in the fall of 1968.

When Mr. Sindermann was made co-chairman his salary was increased $300.00 per year. When this title and authority were dropped, his salary was not reduced by this amount.

At the Annual Convention of the Texas Junior College Teachers Association in February, 1969, in Fort Worth, Mr. Sindermann was elected President of this Association, after the nominee for President resigned.

(See letter of congratulations and reply of February 17)

Mr. Sindermann accepted this office without consultation with any administrative officer of Odessa College. This was within his rights to do so, but had he had the foresight to consult with the administration of Odessa College, many of the subsequent problems which _____ could have been prevented. Two faculty members of Odessa College had previously served as President of this Organization, and with distinction, and with cooperation from the administration in carrying out their duties.

Mr. Sindermann immediately, after his election, requested student clerical help amounting to a full-time secretary, as well as requesting that his teaching load be reduced by one class. These requests were refused. Previous Presidents of the Association had asked for a minimum of clerical help, which had been approved at College expense. Neither had asked for a reduction of class load.

The members of the faculty, who had served as President in previous years, had used the summer months for visiting the various Texas junior colleges. Mr. Sindermann asked for time off during the winter months to accomplish this. His request was refused and it was suggested to him that he follow the pattern set by his predecessors from Odessa College.

Unfortunately, Odessa College has been the object of "politics" in recent months through the efforts of various people to secure the elevation of Odessa College to four year status. Because (1) The Governor's Committee for the Study of Higher Education recommended that no other junior colleges be elevated to senior college status, (2) The Coordinating Board for Higher Education recommended the same, and

(3) In the Master Plan for Higher Education in Texas, the Coordinating Board recommended the establishment of an upper-level institution in the Odessa-Midland area, the Board of Regents of Odessa College saw fit to approve the guidelines of the Coordinating Board and approved the Annexation of the Midland Independent School District to the Odessa Junior College District.

This action, opposed by one member of the College Board of Regents, led to the establishment of a group calling itself "The Committee to Keep Odessa College in Odessa," later known as "The Committee to Elevate Odessa College."

Mr. Sindermann saw fit to align himself with this group, in contradiction to a policy statement of the Board of Regents in the matter. He permitted himself to be called to testify before the Board of Regents as an "expert" on Technical and Vocational Education, and on February 28, addressed a letter to the President of the College with regard to the elevation of Odessa College.

(See letter of February 28.)

He later testified as an "expert" at the hearing of H.B. 157, criticizing decisions of the Coordinating Board, and "reading" into the record a statement of a former Odessa College faculty member. This person had attained a record of failure in administration.

In September of 1968, the Board of Regents adopted a statement on Academic Freedom (see attachment) in line with that suggested by the Coordinating Board which had adopted its suggestion from

that proposed by the American Association of University Professors. The Board postponed until the fall of 1969 any consideration of a statement on Tenure, relying on the statement used for many years in the **Faculty Guide,** which reads as follows:

> **"Teacher Tenure:** Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work."

In the heat of the dissension on the elevation of Odessa College, as opposed to the recommendation of the Coordinating Board for an upper-level college, a rather disgusting ad was run, to which Mr. Sindermann's name was attached, in the local newspaper. This ad ridiculed the position taken by the Board of Regents of Odessa College, contrary to the provisions of the statement of Academic Freedom previously adopted by the Board.

(See copy of ad.)

While Mr. Sindermann submitted a letter of "disclaimer" to the President of the Board of Regents, his "guilt by association" cannot be refuted, because he had acted with this group, opposed to a stated position of the Board of Regents.

In an undated letter from Delton Goodin, Chairman of the Legislative Committee of the Texas Junior College Teachers' Association, Mr. Sindermann

was informed of a hearing on S.B. 512, a bill on Academic Freedom and Tenure.

(See attached letter.)

On April 9, Mr. Sindermann sent a letter to Mr. Bernhard T. Sedate, Dean of the Evening College and Chairman of the Social Science Department, enclosing a copy of Mr. Goodin's letter and requesting permission to absent himself from the campus to testify on SB 512.

The **Faculty Guide of Odessa College,** page 53, contains the following statement:

> "Arrangements for absences with full pay shall be made in advance by the employee. Approval for absence because of personal or family illness shall be granted by the departmental chairman and the Dean of the College. Approval of absence for other causes shall be obtained from the Dean of the College and subject to final approval by the President."

The letter addressed to the Chairman was submitted to the Dean of the College. In line with the regulation of absences contained in the **Faculty Guide,** the letter was, in turn, submitted to the President of the College.

The request to be absent was denied by the President, based on the following reasoning:

(1). Mr. Sindermann was employed as a full-time faculty member to teach students. He can make this contribution to Odessa College only by being present to teach.

(2). The organization of which Mr. Sindermann is President, the Texas Junior College Teachers' Association, has a Legislative Committee Chairman, Mr. Delton Goodin, and it is this person who should have represented the organization if it were to be represented. The President of an organization can not perform all the duties of his officers, and he should not attempt to do so.

(3). The Junior College Teachers' Association has not endorsed S.B. 512.

(See copy of attached resolutions approved at the February meeting.)

(4). The Coordinating Board has suggested the adoption of statements on Academic Freedom and Tenure by college boards of regents. Only a few junior colleges, of which Odessa College is one, have adopted a statement on Academic Freedom. As already mentioned, consideration of a statement on Tenure has been postponed. This prior action of the Board should indicate an interest on the part of the Board in faculty "rights."

A letter denying this request was sent to Mr. Sindermann by Dean Chisum on April 10.

(See attached letter.)

Let it be said at this time that Mr. Sindermann's relationship to the Committee to Elevate Odessa College has never been called to his attention. His violation of the statement on Academic Freedom, wherein his name appeared on an ad which ridiculed actions of the Board of Regents, has never been called to his attention. This should indicate the "tolerance"

of the administration and of the Board to Mr. Sindermann's actions in opposing a "policy" statement of the Board, and of recognition of "rights" of a Faculty Member.

A letter to Mr. Sindermann, dated April 16, from Senator Oscar H. Mauzy, acknowledged receipt of Mr. Sindermann's letter of April 9, and expressed hope that Mr. Sindermann could be present for the hearing on S.B. 512 on April 23 before the State Affairs Committee.

(See letter of April 16 from Senator Mauzy.)

Unfortunately, Mr. Sindermann has not supplied a copy of his letter to Senator Mauzy.

A letter from Senator William T. (Bill) Moore, dated April 16, also acknowledges receipt of Mr. Sindermann's letter, and invites him to appear for a hearing on S.B. 512.

Again, unfortunately, Mr. Sindermann has not supplied a copy of his letter to Senator Moore.

On April 19, Mr. Sindermann wrote a letter to Dean Chisum asking for an opportunity to discuss the refusal contained in the letter of April 10. On April 21, Mr. Sindermann called Dean Chisum's office and the Secretary referred him to the President of the College.

On the afternoon of April 22, Mr. Sindermann came to the office of the President. After discussion of the problem, the President enumerated items (1),

(2), (3), and (4) listed above as reasons for disapproval of the absence and approval was refused by the President.

On the same day, April 22, apparently after talking with the President, Mr. Sindermann wrote a letter to Dean Chisum indicating that he would be absent on April 23, which he was, and his classes were taught by substitutes. The hearing on S.B. 512, however, was not held on April 23.

(See letter of April 22.)

On Saturday, April 26, a four page letter, dated April 25, to the "Chairman of the Social Science Department", Mr. Sedate, was received from Mr. Sindermann. The letter requested that substitutes be secured for Mr. Sindermann "while I am in Austin on official T.J.C.T.A. business," to testify for S.B. 512 and S.B. 531 (Snelson's Upper Level College Bill) (See letter of April 25.)

The above letter was referred to Dean Chisum and the President of the College, who were in conference at the time. Mr. Sedate was instructed to attempt to contact Mr. Sindermann and verbally refuse permission for the absence. He was also asked to type a letter denying permission and deliver it to Mr. Sindermann. Mr. Sedate could make no personal contact with Mr. Sindermann but did deliver the letter to Mr. Sindermann's home.

A letter dated April 27 from Mr. Sindermann to

Mr. Sedate indicated that Mr. Sindermann would be absent from classes on April 28 to testify on S.B. 512. S.B. 512 was not heard on April 28 and Mr. Sindermann appeared on the hearing for S.B. 531.

(See letter of April 27.)

A mimeographed letter, dated May 6, published by Mr. Sindermann indicated that S.B. 512 had been "put in deep freeze" by the Senate State Affairs Committee and urged the Faculty of Odessa College to write and wire Legislators to help "jar it out of Committee."

On May 6, an Executive Session of the Board of Regents of Odessa College was held to approve renewal of contracts. The case of Mr. Sindermann was discussed. The Board was given the information above, as well as informed of the opinion of the College Attorney as to the law regarding contracts in junior colleges (See attached opinion dated April 28).

The resolution passed by the Board was as follows: "Moved by Elliott, seconded by Harding, that the Board accept the approved recommendations of Dr. Rodgers for renewal of contracts."

While the Board expressed disapproval of Mr. Sindermann's actions, the resolution does not specify non-renewal of a contract for Mr. Sindermann.

On May 9, a telegram was received from Senator Oscar H. Mauzy by the President asking for Mr.

Sindermann to testify on S.B. 512 at 2:00 P.M. on May 19. No reply was given to this telegram because of the distant date of the hearing.

Also, on May 9, a letter from Mr. Sindermann to the President, asking a "prompt" answer, inquired about his contract, and asking for a reply by 3:00 P.M. The letter enclosed a statement on "Standards for Notice of Non-reappointment" issued by the American Association of University Professors. This, essentially, is the statement of tenure on which the Board of Regents has postponed action until September of 1969.

(See letter of May 9.)

The President of the College made no reply to this letter because no contracts have been issued to any faculty member. It was not considered necessary to reply to this letter because Mr. Sindermann is one of 106 full-time faculty members and is entitled to no more consideration than the other 105 members.

On May 9, apparently after receiving no reply from his letter, Mr. Sindermann addressed the following letter to the President:

> "I have to leave town now, and will be staying at the Adolphus Hotel, Dallas, tonight and tomorrow. If I am having my contract renewed for next year, you can save all of us a great deal of trouble by so notifying me, promptly."

Also on May 9, a letter to Mr. Sedate requested

permission to be absent on May 19, was received from Mr. Sindermann. This letter was accompanied by a telegram from Senator Mauzy to Mr. Sindermann requesting his presence on May 19.

(See letter and telegram of May 19.)

Both Dean Chisum and the President were absent from Odessa in late afternoon of May 9. Mr. Sedate replied negatively, in the absence of the Dean and President, to the effect that, in view of precedent of two refusals in the past, he had no recourse except to disapprove the request.

(See letter of May 9.)

On May 11, telegrams from Mr. Sindermann were sent to the President, the Dean, and Mr. Sedate from Dallas, stating:

> "Mistake in earlier telegram from Senator Mauzy, S.B. 512 will actually be heard Monday, May 12, in Austin at 2 P.M. Request permission to attend hearing. Please reply my home address Sunday."

Mr. Sedate reported to the President that, in his absence, he had told Mr. Sindermann that his telegram request had been denied.

To this date, no official correction of the date of hearing on S.B. 512 has been received by members of the administrative staff of Odessa College.

On Monday, May 12, the President of Odessa College received information from a local newspaper

reporter that Mr. Sindermann had wired Senator Mauzy the following information, if not in the exact language, since a copy of the telegram has not been presented to the President of the College:

> "I have been fired from Odessa College for attempting to testify on S.B. 512. All the more reason for action on this bill. Advise elimination of Odessa College from a line item appropriation in the appropriation bill."

As of this date no contracts have been renewed for faculty members. Mr. Sindermann has not been notified officially that his contract will not be renewed.

APPENDIX "B"

cb policy paper 1

COORDINATING BOARD
TEXAS COLLEGE AND UNIVERSITY SYSTEM

• Academic Freedom,

• Tenure, and

• Responsibility

for Faculty Members in Texas Public Colleges and Universities

Adopted: October 16, 1967

• Academic Freedom,

• Tenure, and

• Responsibility

for Faculty Members in Texas Public Colleges and Universities

Adopted: October 16, 1967

ACADEMIC FREEDOM, TENURE, AND RESPONSIBILITY FOR FACULTY MEMBERS IN TEXAS PUBLIC COLLEGES AND UNIVERSITIES

The statement which follows, issued in response to Section 14, Paragraph 2, of House Bill 1, 59th Texas Legislature, provides guiding principles designed to aid Texas colleges and universities in evaluating the conditions of academic freedom, tenure, and responsibility that prevail on each campus.

I

Academic Freedom

Institutions of higher education are conducted for the common good. The common good depends upon a free search for truth and its free expression. Hence, it is essential that the faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish his conclusions concerning the significance of evidence that he considers relevant. He must be free from the corrosive fear that others, inside or outside the university community, because their vision may differ from his own, may threaten his professional career or the material benefits accruing from it.

Each faculty member is entitled to full freedom in the classroom in discussing the subject which he teaches. Each faculty member is also a citizen of his nation, state and community; and when he speaks, writes or acts as such, must be free from institutional censorship or discipline.

II

Academic Responsibility

The concept of academic freedom must be accompanied by an equally demanding concept of responsibility, shared by governing boards, administrators, and faculty members.

The essential responsibilities of governing boards and administrators are set forth in the **Standards for Colleges,** adopted by the Southern Association of Colleges and Schools, as updated and revised.

The fundamental responsibilities of a faculty member as a teacher and scholar include a maintenance of competence in his field of specialization and the exhibition of such competence in lectures, discussions or publications.

Exercise of professional integrity by a faculty member includes recognition that the public will judge his profession and his institution by his statements. Therefore, he should strive to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to avoid creating the impression that he speaks or acts for his college or university when he speaks or acts as a private person.

A faculty member should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to his subject field.

A faculty member has the responsibility to provide

due notice of his intention to interrupt or terminate institutional services.

III

Tenure Policy

A. Tenure

Tenure means assurance to an experienced faculty member that he may expect to continue in his academic position unless adequate cause for dismissal is demonstrated in a fair hearing, following established procedures of due process.

A specific system of faculty tenure undergirds the integrity of each academic institution. In the Texas public colleges and universities, this tenure system should have these components:

(1) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period for a faculty member shall not exceed seven years, including within this period appropriate full-time service in all institutions of higher education. This is subject to the provision that when, after a term of probationary service of more than three years in one or more institutions, a faculty member is employed by another institution, it may be agreed in writing that his new appointment is for a probationary period of not more than four years, (even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years).

(2) Notice of nonreappointment, or of intention not to reappoint a faculty member, should be given in writing in accord with the following standards: (a) Not later than March 1 of the first academic year of probationary service, if the appointment ex-

pires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination; (b) not later than December 15 of the second year of probationary service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination; (c) at least twelve months before the expiration of a probationary appointment after two or more years in the institution.

(3) Adequate cause for dismissal for a faculty member with tenure may be established by demonstrating professional incompetence, moral turpitude, or gross neglect of professional responsibilities.

Cases of **bona fide** financial emergency, or the phasing out of institutional programs requiring reduction of faculty, may permit exceptions of tenure regulations in unusual circumstances.

B. Faculty Dismissals

Proper dismissal procedures, established in anticipation of their being needed, are essential to an effective tenure system. In the Texas public college and university system, these procedures should have the following components:

(1) These dismissal procedures apply to a faculty member who has tenure, or whose term appointment has not expired, or who alleges a **prima facie** case of a violation of academic freedom in the non-renewal of his contract. If he **has** tenure or an unexpired appointment extending beyond the period of the proposed dismissal, the burden of proof is upon the administration to show adequate cause why he should

be dismissed. If he does **not** have tenure, but contends that the non-renewal of his contract constitutes a violation of his academic freedom, the burden of proof is upon the faculty member. If a faculty member on probationary appointment alleges that the non-renewal of his contract constitutes a violation of academic freedom, he may request that his allegations be given preliminary consideration by a faculty committee. The committee shall then recommend whether a hearing is warranted.

(2) The institution's procedure in dismissal cases described in (1) above should include, first, a **bona fide** effort to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion, or confidential mediation.

Should these efforts fail, presentation of reasonably detailed and formally written charges should be made to the concerned faculty member. Presentation of such charges shall provide for (a) a written response to the charges by the faculty member, if he wishes a hearing; (b) opportunity by the faculty member to exercise his right to be represented by counsel of his choosing, to have a hearing before a regular elected faculty committee, to confront and cross-examine witnesses, to know the name and statement of a witness who for extraordinary reasons does not appear at the hearing, to respond orally to charges made against him, to have findings and recommendations made on each of the charges, and to be given a complete transcript of the hearing, including the findings of the faculty committee; (c) a review of the case, if essential, by an appropriate reviewing body—the review to include the findings and recommendations of the hearing committee, the

opportunity of the faculty member and university representative for oral argument, the return of the proceeding to the hearing committee if the original recommendations are not sustained, the study of the hearing committee's reconsidered findings and recommendations, and the rendering of a final decision (which should be written in the rare case in which the hearing committee is overruled).

(3) If the faculty appointment is to be terminated, the faculty member, except in cases of moral turpitude, will receive his salary at least for one year or for the period of notice to which he is entitled under these regulations. He will be continued in his duties for that period unless at the discretion of the institution he be granted a leave of absence with pay.

IV

Implementation

Within one year, and with appropriate faculty participation, each public institution in Texas is expected to draft its own written statement on academic freedom, tenure, and responsibilities. The statement should be based on the guiding principles described in the preceding paragraphs, and a copy should be filed with the Coordinating Board, Texas College and University System. Each statement should detail a procedure to be followed in case of dismissal of a tenured faculty member.

APPENDIX I

Written Terms of Employment

The institution shall provide each faculty member with a statement in writing of the terms of his employment, including special conditions, responsibilities and any special prerequisites. The document

should cover such items as rank, salary, tenure provisions, whether the position is full-time or part-time, and the inclusive dates of the term of service.

APPENDIX II

Tenure, Financial Exigency, and Phasing Out Of Programs

Cases of **bona fide** financial exigency, or the phasing out of institutional programs requiring reduction of faculty, may permit exceptions to tenure regulations in unusual circumstances.

(1) Faculty members involved in such adjustments in emergency situations should be given opportunities for appointment in related areas provided (a) they are qualified professionally to teach in such areas, and (b) such positions are available.

(2) Faculty members who can present **prima facie** evidence of discriminatory treatment or infringement of academic freedom in such emergencies have the right to a fair hearing before an elected faculty committee.

(3) Any faculty member involved in such a readjustment process has the right to reappointment to his previous position if it is re-established within two calendar years.

APPENDIX III

Due Process Proceedings In Dismissal Cases and Cases Where Academic Freedom Infringement Is Alleged

Due process as set forth in this statement embodies a course of professional proceedings in line with stated rules and principles generally recognized in

the academic community. Due process carries with it the right of a tenured faculty member or a teacher with an unexpired term contract to a fair hearing before an elected committee of his peers. The procedure which follows illustrates how the principle of due process can be adapted to individual institutions.

a. **Personal Conference.** When reason arises to question the fitness of a faculty member, the appropriate administrative officers should discuss the matter with him in personal conference. The matter may be terminated by mutual consent at this point; but if an adjustment does not result, the matter should be taken up by an advisory committee.

b. **Advisory Committee.** The advisory committee should be a standing committee elected by the faculty or an appropriate organized faculty organization, appointed by the President of the Faculty Senate or other elected faculty representative body, or appointed by the chief executive officer of the institution from a faculty elected panel. The committee's proceedings may be informal and flexible. It should make such inquiry as it deems necessary, offer confidential advice to the faculty member and the administration, and attempt to effect an adjustment. If none is effected, the advisory committee or the chief executive officer may recommend a hearing. If a hearing is to be held, the chief executive officer should formulate a statement of the grounds for dismissal, giving due regard to the advisory committee's report. These grounds should be reasonably detailed.

c. **Hearing Committee.** The hearing committee should be an elected standing committee, or a standing or **ad hoc** committee appointed as noted in the paragraph above, not overlapping in membership with the advisory committee. The hearing committee

should include only teaching faculty members of tenure status, and each member should be subject to challenge for cause.

If a hearing is recommended, the chief executive officer should send a letter to the faculty member informing him of the grounds for dismissal proceedings, and informing him that, should he so request, a hearing to determine whether he should be removed from his faculty position will be conducted by the hearing committee at a specified time and place. The chief executive officer's letter should inform the faculty member of the procedural rights which will be accorded to him in the hearing. These should include an advisor of his own choosing to act as counsel; a full stenographic record of the proceedings, a transcript of which is to be made available to him and to the President; the right to question witnesses; the opportunity to be confronted by all witnesses adverse to him; and, if a witness cannot appear, the right to the name and statement of the witness.

If the faculty member desires a hearing, he should write to the institution's chief executive officer within a reasonable period, in response to the statements given as grounds for his dismissal.

Suspension of the faculty member from his usual duties during the proceedings involving him is justified only if his welfare or that of the institution or its students is threatened by his continuance. Any such suspension should be with pay and with appropriate provisions for useful duties whenever possible.

In deliberating, the committee should allow oral arguments or written briefs by the chief executive officer or his representative, and by the faculty mem-

ber or his representative. The committee should make explicit findings with respect to each of the grounds of removal presented and should recommend whether there is adequate cause for dismissal. The committee's recommendation should be conveyed in writing to the chief executive officer and to the faculty member.

Governing Board. If the faculty member's appointment is proposed to be terminated, the chief executive officer should transmit the full report of the hearing committee to the institution's Governing Board. If the Governing Board chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for argument by the principals or their representatives. The decision of the hearing committee should either be sustained or the proceedings be returned to the chief executive officer and to the committee with objections specified. In such case, the committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its reconsidered recommendation and communicate it in the same manner as before. Only after study of the committee's reconsideration should the Governing Board render a written decision overruling the committee.

Publicity. The proceedings of the hearing committee should be confined to the principles, their advisers, the witnesses called by the committee, and such observers as the committee may specifically invite. Except for such brief announcements as may be required, covering the time of the hearing and related matters, public statements about the case by either the faculty member or administrative officers should

be avoided so far as possible until the proceedings have been completed. Announcement of a final decision should include a statement of the hearing committee's original action, if this has not previously been made known.

APPENDIX IV

Recruitment and Resignation Of Faculty Members

Sound procedures regarding the recruitment and resignation of faculty members are essential for the proper functioning of colleges and universities. The following nationally recognized statement is recommended for both administrations and faculty members in Texas State colleges and universities.

* * *

Mobility of faculty members among colleges and universities is rightly recognized as desirable in American higher education. Yet the departure of a faculty member always requires changes within his institution, and may entail major adjustments on the part of his colleagues, the administration, and students in his field. Ordinarily a temporary or permanent successor must be found and appointed to either his position or the position of a colleague who is promoted to replace him.

In a period of expansion of higher education, such as that already existing and promising to be even more intensified as a pattern for the coming years, adjustments are required more frequently as the

number of positions and of transfers among institutions increases. These become more difficult than at other times, especially in the higher academic ranks. Clear standards of practice in the recruitment and in the resignations of members of existing faculties should contribute to an orderly interchange of personnel that will be in the interest of all.

The standards set forth below are recommended to administrations and faculties, in the belief that they are sound and should be generally followed. They are predicated on the assumption that proper provision has been made by employing institutions for timely notice to probationary faculty members and those on term appointments, with respect to their subsequent status. In addition to observing applicable requirements for notice of termination to probatonary faculty members, institutions should make provision for notice to all faculty members not later than March 15 of each year of their status the following fall, including rank and (unless unavoidable budget procedures beyond the institution forbid) prospective salary.

1. Negotiations looking to the possible appointment for the following fall of persons who are already faculty members of other institutions, in active service or on leave-of-absence and not on terminal appointment, should be begun and completed as early as possible in the academic year. It is desirable that, when feasible, the faculty member who has been approached with regard to another position inform the

appropriate officers of his institution when such negotiations are in progress. The conclusion of a binding agreement for the faculty member to accept an appointment elsewhere should always be followed by prompt notice to his institution.

2. A faculty member should not resign in order to accept other employment as of the end of the academic year, later than May 15 or 30 days after receiving notification of the terms of his continued employment the following year, whichever date occurs later. It is recognized, however, that this obligation will be in effect only if institutions generally observe the time factor set forth in the following paragraph for new offers. It is also recognized that emergencies will occur. In such an emergency the faculty member may ask the appropriate officials of his institution to waive this requirement; but he should conform to their decision.

3. To permit a faculty member to give due consideration and timely notice to his institution in the circumstances defined in paragraph 1 of these standards, an offer of appointment for the following fall at another institution should not be made after May 1. The offer should be a "firm" one, not subject to contingencies.

4. Institutions deprived of services of faculty members too late in the academic year to permit their replacement by securing the members of other faculties in conformity to these standards, and institutions otherwise prevented from taking timely action to

recruit from other faculties, should accept the necessity of making temporary arrangements or obtaining personnel from other sources, including new entrants to the academic profession and faculty personnel who have retired.

5. Except by agreement with his institution, a faculty member should not leave or be solicited to leave his position during an academic year for which he holds an appointment.

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[1] The Statement on Recruitment and Resignation of Faculty Members, reprinted here, was adopted by the Association of American Colleges in January, 1961, with the following reservations as set forth in a preamble prepared by that Association's Commission on Academic Freedom and Tenure:

(1) No set of principles adopted by the Association can do more than suggest and recommend a course of action. Consequently, the present statement in no way interferes with institutional sovereignty.

(2) The Commission realizes that the diversity of practice and control that exists among institutions of higher learning precludes any set of standards from being universally applicable to every situation.

(3) The statement is concerned only with minimum standards and in no way seeks to create a norm for institutions at which "better" practices already are in force.

(4) The Commission recognizes the fact that "emergency" situations will arise and will have to be dealt with. However, it urges both administration and faculty to do so in ways that will not go counter to the spirit of cooperation, good faith and responsibility that the statement is seeking to promote.

(5) The Commission believes that the Spirit embodied in the proposed statement is its most important aspect.

DECEMBER 1967 AAUP

WINTER ISSUE

bulletin

APPENDIX "C"

Statements on Rights and Freedoms of Students

Program for Faculty Responsibility and Authority

The Case for a Doctor of Arts Degree: A View from Junior College Faculty

Academic Freedom and Tenure:
- Texas A & M University
- Arkansas A & M College
- Cheyney State College

State-Wide Coordination and College and University Faculties

Academic Freedom in Church-Related Colleges and Universities

Texas Coordinating Board Statement on Academic Freedom, Tenure, and Responsibility

a publication of the American Association of University Professors

VOLUME 53 • NUMBER 4

TEXAS COORDINATING BOARD STATEMENT ON ACADEMIC FREEDOM, TENURE, AND RESPONSIBILITY

The following statement was adopted unanimously on October 16, 1967, by the Coordinating Board of the Texas College and University System. Drafted in the first instance by an Advisory Committee composed of faculty members and administrative officials from Texas colleges and universities, the statement as adopted has been brought to the attention of each junior and senior college and university in Texas. Those portions of the statement related to academic freedom and responsibility have been recommended for prompt implementation as institutional policy; the portion related to tenure is being presented to a special legislative study committee in the hope that it will be incorporated into a bill for action by the Texas Legislature.

The Association's Committee A on Academic Freedom and Tenure discussed the statement and recommended that it be published in the AAUP Bulletin so that it can come to the attention of the academic profession. The Committee hopes that the Texas statement will be of particular interest to persons and groups in other states which may be considering statewide policy in these important areas.

Statement on Academic Freedom, Tenure and Responsibility for Faculty Members in Texas Public Colleges and Universities

The statement which follows, issued in response to Section 14, Paragraph 2, of House Bill 1, 59th Texas Legislature, provides guiding principles designed to aid Texas colleges and universities in evalu-

ating the conditions of academic freedom, tenure, and responsibility that prevail on each campus.

I

Academic Freedom

Institutions of higher education are conducted for the common good. The common good depends upon a free search for truth and its free expression. Hence, it is essential that the faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish his conclusions concerning the significance of evidence that he considers relevant. He must be free from the corrosive fear that others, inside or outside the university community, because their vision may differ from his own, may threaten his professional career or the material benefits accruing from it.

Each faculty member is entitled to full freedom in the classroom in discussing the subject which he teaches. Each faculty member is also a citizen of his nation, state, and community; and when he speaks, writes, or acts as such, must be free from institutional censorship or discipline.

II

Academic Responsibility

The concept of academic freedom must be accompanied by an equally demanding concept of responsibility, shared by governing boards, administrators, and faculty members.

The essential responsibilities of governing boards and administrators are set forth in the Standards for Colleges, adopted by the Southern Assocation of Colleges and Schools, as updated and revised.

The fundamental responsibilities of a faculty member as a teacher and scholar include a maintenance of competence in his field of specialization and the exhibition of such competence in lectures, discussions, or publications.

Exercise of professional integrity by a faculty member includes recognition that the public will judge his profession and his institution by his statements. Therefore, he should strive to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to avoid creating the impression that he speaks or acts for his college or university when he speaks or acts as a private person.

A faculty member should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to his subject field.

A faculty member has the responsibility to provide due notice of his intention to interrupt or terminate institutional services.

III

Tenure Policies

A. Tenure

Tenure means assurance to an experienced faculty member that he may expect to continue in his academic positions unless adequate cause for dismissal is demonstrated in a fair hearing, following established procedures of due process.

A specific system of faculty tenure undergirds the integrity of each academic institution. In the Texas public colleges and universities, this tenure system should have these components:

(1) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period for a faculty member shall not exceed seven years, including within this period appropriate full-time service in all institutions of higher education. This is subject to the provisions that when, after a term of probationary service of more than three years in one or more institutions, a faculty member is employed by another institution, it may be agreed in writing that his new appointment is for a probationary period of not more than four years (even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years).

(2) Notice of nonreappointment, or of intention not to reappoint a faculty member, should be given in writing in accord with the following standards: (a) Not later than March 1 of the first academic year of probationary service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination. (b) Not later than December 15 of the second year of probationary service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination. (c) At least twelve months before the expiration of a probationary appointment after two or more years in the institution.

(3) Adequate cause for dismissal for a faculty member with tenure may be established by demonstrating professional incompetence, moral turpitude, or gross neglect of professional responsibilities.

Cases of bona fide financial emergency, or the phasing out of institutional programs requiring reduction of faculty, may permit exceptions of tenure regulatons in unusual circumstances.

B. **Faculty Dismissals**

Proper dismissal procedures, established in anticipation of their being needed, are essential to an effective tenure system. In the Texas public college and university system, these procedures should have the following components:

(1) These dismissal procedures apply to a faculty member who has tenure, or whose term appointment has not expired, or who alleges a **prima facie** case of a violation of academic freedom in the nonrenewal of his contract. If he **has** tenure or an unexpired appointment extending beyond the period of the proposed dismissal, the burden of proof is upon the administration to show adequate cause why he should be dismissed. If he does **not** have tenure, but contends that the nonrenewal of his contract constitutes a violation of his academic freedom, the burden of proof is upon the faculty member. If a faculty member on probationary appointment alleges that the nonrenewal of his contract constitutes a violation of academic freedom, he may request that his allegations be given preliminary consideration by a faculty committee. The committee shall then recommend whether a hearing is warranted.

(2) The institution's procedure in dismissal cases described in (1) above should include, first, a bona fide effort to achieve a satisfactory resolution of difficulties through preliminary inquiry, discussion, or confidential mediation.

Should these efforts fail, presentation of reasonably detailed and formally written charges should be made to the concerned faculty member. Presentation of such charges shall provide for (a) a written response to the charges by the faculty member, if he wishes a hearing; (b) opportunity by the faculty member to exercise his right to be represented by counsel of his choosing, to have a hearing before a regularly elected faculty committee, to confront and cross-examine witnesses, to know the name and statement of a witness who for extraordinary reasons does not appear at the hearing, to respond orally to charges made against him, to have findings and recommendations made on each of the charges, and to be given a copy of a complete transcript of the hearing, including the findings of the faculty committee; (c) a review of the case, if essential, by an appropriate reviewing body—the review to include the findings and recommendations of the hearing committee, the opportunity of the faculty member and university representative for oral argument, the return of the proceeding to the hearing committee if the original recommendations are not sustained, the study of the hearing committee's reconsidered findings and recommendations, and the rendering of a final decision (which should be written in the rare case in which the hearing committee is overruled).

(3) If the faculty appointment is to be terminated, the faculty member, except in cases of moral turpitude, will receive his salary at least for one year or for the period of notice to which he is entitled under these regulations. He will be continued in his duties, for that period unless at the discretion of the institution he be granted a leave of absence with pay.

IV

Implementation

Within one year, and with appropriate faculty participation, each public institution in Texas is expected to draft its own written statement on academic freedom, tenure, and responsibilities. The statement should be based on the guiding principles described in the preceding paragraphs, and a copy should be filed with the Coordinating Board, Texas College and University System. Each statement should detail a procedure to be followed in case of dismissal of a tenured faculty member.

THE STANDARDS FOR NOTICE OF NONREAPPOINTMENT

(Endorsed by The Fiftieth Annual Meeting)

Because a probationary appointment, even though for a fixed or stated term, carries an expectation of renewal, the faculty member should be explicitly informed of a decision not to renew his appointment, in order that he may seek a position at another college or university. Such notice should be given at an early date, since a failure to secure another position for the ensuing academic year will deny the faculty member the opportunity to practice his profession. The purpose of this Statement is to set forth in detail, for the use of the academic profession, those standards for notice of nonreappointment which the Association over a period of years has actively supported and which are expressed as a general principle in the 1940 **Statement of Principles on Academic Freedom and Tenure.**

The Standards for Notice

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

(1) **Not later than March 1 of the first academic year of service,** if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

(2) **Not later than December 15 of the second year of service,** if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(3) At least twelve months before the expiration of an appointment after two or more years in the institution.

APPENDIX "D"

WU western union **Telegram**

1044A CDT MAY 9 69 NSA056

NS NS PPA003 PM PD VT

AUSTIN TEX 9 1040A CST

1969 MAY 9 AM 10 55

DR JACK ROGERS, PRESIDENT, DLY 75
ODESSA COLLEGE ODESSA TEX

DEAR DR ROGERS: SENATE BILL 512 PERTAINING TO ACADEMIC TENURE WILL BE HEARD IN THE SENATE COMMITTEE ON STATE AFFAIRS ON MONDAY MAY 19 1969 AT 2:00 PM I WOULD APPRECIATE THE PRESENCE OF DR SINDERMANN OF YOUR FACULTY IN ORDER THAT HE CAN TESTIFY ON THIS BILL

OSCAR H MAUZY SENATOR

(1042).

8F-1201 (R5-69)

The Senate of
The State of Texas
Austin

WILLIAM T. "BILL" MOORE
DISTRICT 5
BRYAN

April 16, 1969

Mr. Robert Sindermann
P. O. Box 3752
Odessa, Texas 79760

Dear Mr. Sindermann:

Thank you for your letter concerning the two bills involving junior colleges in your area. Since you have expressed interest in these bills, I would like to invite you to testify on both when hearings are held. Senate Bill 512 will be heard Wednesday, April 23 at 2:00 P.M. in the Senate Chamber. Although this bill is first on the calendar, we have had no hearings this current week, and it is possible that the nineteen bills scheduled for hearing may interfere with the position of S.B. 512. If this is true, I will attempt to notify you.

Senate Bill 531, creating Permian State College, is scheduled for hearing on Monday, April 28. By this date I do hope that we will have had no more filibusters, as this week, and that we will be on schedule as much as possible. If there is any change, again I will notify you.

We have attempted this year to provide both proponents and opponents of a bill a full, fair and complete hearing. If you have any other questions please do write to me.

Sincerely Yours
William T. (Bill) Moore
WTM/bb

The Senate of
The State of Texas
Austin

OSCAR H. MAUZY
DISTRICT 23
SOUTHWEST DALLAS COUNTY

COMMITTEES:
CHAIRMAN:
FEDERAL PROGRAMS AND RELATIONS
VICE-CHAIRMAN:
EDUCATION
MEMBER:
CLAIMS
CONSTITUTIONAL AMENDMENTS
INSURANCE
INTERSTATE COOPERATION
LEGISLATIVE, CONGRESSIONAL AND JUDICIAL DISTRICTS
PRIVILEGES AND ELECTIONS
STATE DEPARTMENTS AND INSTITUTIONS
YOUTH AFFAIRS

April 16, 1969

Dr. Robert Sindermann
State President
Texas Junior College Teachers
Association
Odessa College
P. O. Box 3752
Odessa, Texas 79760

Dear Doctor Sindermann:

Thank you for your letter of April 9, 1969.

I hope you can be with us at the hearing on Senate Bill 512 on April 23, 1969, before the State Affairs Committee.

I will be pleased to discuss with you, and the other members of your group who will be here that day, the matters raised in your question.

Sincerely,

Oscar H. Mauzy

APPENDIX "E"

May 15, 1969

TO WHOM IT MAY CONCERN:

We, the undersigned, are members of the faculty of the Social Science Department of Odessa Junior College and attest to the fact that Robert Sindermann is a totally competent person professionally and that we feel that nothing that he has said or done has, in any way, derogated from his competence in the classroom as a lecturer in Government at Odessa Junior College.

Truett L. Hilliard

David Yeilding

Tom J. Heiting

Dick K. Kennedy

Darius J. Conger

Ina Mae McCollom

Robert B. Porter

Helen K. Reinhardt, Ph.D.

Mary Jane Gentry

Ralph R. Swafford

APPENDIX "F"

ODESSA COLLEGE
Office of the President
Founded In 1946
P. O. Box 3752
Odessa, Texas 79760

May 19, 1969

Mr. Robert P. Sindermann
Social Science Department
Odessa College
Odessa, Texas 79760

Dear Mr. Sindermann:

The Board of Regents on May 6, 1969, voted to approve my recommendation not to renew your contract for 1969-70. You have been supplied with a statement, with attachments, indicating the basis for this recommendation.

Sincerely,

Jack Rodgers
President

js

MOTION FOR MORE DEFINITE STATEMENT

(Number and Title Omitted. Filed: Jun 11, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME the Board of Regents of Odessa Junior College in their official capacity, and file this, their Motion for More Definite Statement, and would respectively show:

1.

That in paragraphs numbered XXI, XXII, and XXVII reference is made to other members of the faculty of Odessa Junior College but such faculty members are not named and are not made parties to the suit. These defendants are entitled to know the names of such alleged faculty members, if any there are, and on whose behalf said suit is purportedly brought.

WHEREFORE, premises considered, these defendants pray that this motion be set down for hearing and that upon hearing hereof the Court order that the names of the alleged faculty members be disclosed and included in the pleadings if in fact they are to be parties to the suit or in no way involved therein.

RAYMOND D. WIER
300 North Jackson Avenue
Odessa, Texas 79760

SHAFER, GILLILAND, DAVIS, BUNTON
& McCOLLUM
P. O. Box 1552, Odessa, Texas 79760
By s/ W. O. Shafer
W. O. Shafer
By s/ Lucius D. Bunton
Lucius D. Bunton

ATTORNEYS FOR DEFENDANT THE BOARD OF REGENTS OF ODESSA JUNIOR COLLEGE

—0—

MOTION TO STRIKE

(Number and Title Omitted. Filed: Jun 11, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Board of Regents of Odessa Junior College in their official capacity and as defendants in the above case and move to strike certain portions of Plaintiff's Original Complaint.

I.

These defendants move to strike paragraph numbered VII for the reason that the same is hearsay and has no probative value and is prejudicial.

II.

These defendants move to strike paragraph numbered VIII for the reason that the same is hearsay and has no probative value and is prejudicial.

III.

These defendants move to strike paragraph num-

bered X for the reason that the same is hearsay and has no probative value and is prejudicial.

IV.

These defendants move to strike paragraph numbered XII for the reason that the same is hearsay and has no probative value and is prejudicial.

V.

These defendants move to strike paragraph numbered XIII for the reason that the same is hearsay and has no probative value and is prejudicial.

VI.

These defendants move to strike paragraph numbered XIV for the reason that the same is hearsay and has no probative value and is prejudicial.

WHEREFORE, premises considered, these defendants pray that this motion be set down for hearing and that upon hearing hereof the above paragraphs be stricken from Plaintiff's Original Complaint.

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By s/ W. O. Shafer
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By s/ Lucius D. Bunton
LUCIUS D. BUNTON

ATTORNEYS FOR DEFENDANT
THE BOARD OF REGENTS OF
ODESSA JUNIOR COLLEGE

ORIGINAL ANSWER OF THE BOARD OF REGENTS OF ODESSA JUNIOR COLLEGE

(Number and Title Omitted. Filed: Jun 11, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME the Board of Regents of Odessa Junior College in their official capacity as members of such Board and file this, their original answer, subject to their other pleadings herein, and for such would respectfully show to the Court the following, to-wit:

FIRST DEFENSE

1. These defendants admit the allegations contained in paragraph numbered I of Plaintiff's Original Complaint.

2. These defendants admit the allegations contained in paragraph numbered II. of Plaintiff's Original Complaint.

3. These defendants admit the allegations contained in paragraph numbered III. of Plaintiff's Original Complaint.

4. These defendants deny the allegations contained in paragraph numbered IV. of Plaintiff's Original Complaint.

5. These defendants admit the allegations contained in paragraph numbered V. of Plaintiff's Original Complaint.

6. These defendants admit the allegations contained in paragraph numbered VI. of Plaintiff's Original Complaint.

7. These defendants deny the allegations contained in paragraph numbered VII. of Plaintiff's Original Complaint.

8. These defendants are without sufficient information to admit or deny the allegations contained in paragraph numbered VIII of Plaintiff's Original Complaint, and therefore deny the same.

9. These defendants admit the allegations contained in paragraph numbered IX. of Plaintiff's Original Complaint.

10. These defendants deny the allegations contained in paragraph numbered X. of Plaintiff's Original Complaint.

11. These defendants admit the allegations contained in paragraph numbered XI. of Plaintiff's Original Complaint.

12. These defendants admit the allegations contained in paragraph numbered XII. of Plaintiff's Original Complaint.

13. These defendants deny the allegations contained in paragraph numbered XIII. of Plaintiff's Original Complaint.

14. These defendants deny the allegations contained in paragraph numbered XIV. of Plaintiff's Original Complaint.

15. These defendants admit the allegations contained in paragraph numbered XV. of Plaintiff's Original Complaint.

16. These defendants deny the allegations contained in paragraph numbered XVI. of Plaintiff's Original Complaint.

17. These defendants deny the allegations contained in paragraph numbered XVII. of Plaintiff's Original Complaint.

18. These defendants deny the allegations contained in paragraph numbered XVIII. of Plaintiff's Original Complaint.

19. These defendants deny the allegations contained in paragraph numbered XIX. of Plaintiff's Original Complaint.

20. These defendants deny the allegations contained in paragraph numbered XX. of Plaintiff's Original Complaint.

21. These defendants deny the allegations contained in paragraph numbered XXI. of Plaintiff's Original Complaint.

22. These defendants deny the allegations contained in paragraph numbered XXII. of Plaintiff's Original Complaint.

23. These defendants deny the allegations contained in paragraph numbered XXIII. of Plaintiff's Original Complaint.

24. These defendants deny the allegations contained in paragraph numbered XXIV. of Plaintiff's Original Complaint.

25. These defendants deny the allegations contained in paragraph numbered XXV. of Plaintiff's Original Complaint.

26. These defendants deny the allegations contained in paragraph numbered XXVI. of Plaintiff's Original Complaint.

27. These defendants deny the allegations contained in paragraph numbered XXVII. of Plaintiff's Original Complaint.

SECOND DEFENSE

Subject to the admissions heretofore made and such admissions as may be made on the trial hereof, these defendants deny the allegations contained in Plaintiff's Original Complaint and demand strict proof thereof.

THIRD DEFENSE

These defendants allege that the Odessa Junior College enterd into a contract with the plaintiff to perform services as a teacher and instructor, which contract expired on May 31, 1969: The Odessa Junior College has done and performed each and every thing it was required to perform under said contract and has discharged its full and complete responsibilities therein and has no further obligation or liability to the plaintiff herein. It is alleged by the plaintiff and it is a fact that Odessa Junior College has no tenure system and none has been acquired by the plaintiff herein and these defendants have no legal obligation in connection therewith.

FOURTH DEFENSE

These defendants further allege and show that the President of Odessa Junior College who is charged by law with the duty of making recommendations to the Board did not recommend to the Board that the contract of the plaintiff be renewed and this Board has no legal authority, under such circumstances, to renew said contract and therefore has no liability of any kind to the plaintiff herein.

FIFTH DEFENSE

These defendants further show and allege that each and every decision made by them in connection with the contract with the plaintiff was made in the utmost good faith, under legal advice, and in compliance wih and pursuant to the laws of the State of Texas with which they are bound and obligated to comply.

WHEREFORE, premises considered, these de-

fendants pray that the plaintiff take nothing by his suit and these defendants be discharged with their costs.

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LUCIUS D. BUNTON

ATTORNEYS FOR DEFENDANT
THE BOARD OF REGENTS OF
ODESSA JUNIOR COLLEGE

—0—

ORIGINAL ANSWER OF THE DEFENDANT, DR. JACK RODGERS

(Number and Title Omitted. Filed: Jun 11, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Dr. Jack Rodgers, individually and as President of Odessa Junior College and files this, his original answer in this cause and for such would respectively show to the Court the following, to-wit:

FIRST DEFENSE

1. This defendant admits the allegations contained in paragraph numbered I. of Plaintiff's Original Complaint.

2. This defendant admits the allegations contained in paragraph numbered II. of Plaintiff's Original Complaint.

3. This defendant admits the allegations contained in paragraph numbered III. of Plaintiff's Original Complaint.

4. This defendant denies the allegations contained in paragraph numbered IV. of Plaintiff's Original Complaint.

5. This defendant admits the allegations contained in paragraph numbered V. of Plaintiff's Original Complaint.

6. This defendant admits the allegations contained in paragraph numbered VI. of Plaintiff's Original Complaint.

7. This defendant denies the allegations contained in paragraph numbered VII. of Plaintiff's Original Complaint.

8. This defendant is without sufficient information to admit or deny the allegations contained in paragraph numbered VIII. of Plaintiff's Original Complaint, and therefore denies the same.

9. This defendant admits the allegations contained in paragraph numbered IX. of Plaintiff's Original Complaint.

10. This defendant denies the allegations contained in paragraph numbered X. of Plaintiff's Original Complaint.

11. This defendant admits the allegations contain-

ed in paragraph numbered XI. of Plaintiff's Original Complaint.

12. This defendant admits the allegations contained in paragraph numbered XII. of Plaintiff's Original Complaint.

13. This defendant denies the allegations contained in paragraph numbered XIII. of Plaintiff's Original Complaint.

14. This defendant denies the allegations contained in paragraph numbered XIV. of Plaintiff's Original Complaint.

15. This defendant admits the allegations contained in paragraph numbered XV. of Plaintiff's Original Complaint.

16. This defendant denies the allegations contained in paragraph numbered XVI. of Plaintiff's Original Complaint.

17. This defendant denies the allegations contained in paragraph numbered XVII. of Plaintiff's Original Complaint.

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ed in paragraph numbered XXII. of Plaintiff's Original Complaint.

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24. This defendant denies the allegations contained in paragraph numbered XXIV. of Plaintiff's Original Complaint.

25. This defendant denies the allegations contained in paragraph numbered XXV. of Plaintiff's Original Complaint.

26. This defendant denies the allegations contained in paragraph numbered XXVI. of Plaintiff's Original Complaint.

27. This defendant denies the allegations contained in paragraph numbered XXVII. of Plaintiff's Original Complaint.

SECOND DEFENSE

Subject to such admissions heretofore made and such admissions as may be made on the trial hereof, this defendant denies the allegations contained in Plaintiff's Original Complaint and demands strict proof thereof.

THIRD DEFENSE

This defendant alleges that he is charged by law with the duty of exercising his best judgment in the matter of the employment of instructors or teachers at Odessa Junior College and to make recommendations in connection therewith to the Board of Regents. He alleges and shows that in pursuance of the exercise of his best judgment he did not recommend that the plaintiff's contract be renewed for adequate reasons and sufficient cause. He alleges that in his

best wisdom and judgment the renewal of said contract would not be in the best interests of Odessa Junior College, and following that exercise and in pursuance of the exercise of such wisdom and judgment, he did not recommend the renewal thereof. This defendant alleges that his action in so doing was in the utmost good faith and discharge of duties imposed upon him by law and in the discharge of responsibilities placed upon him as President of Odessa Junior College.

FOURTH DEFENSE

This defendant further alleges and shows that before making or disclosing his decision he asked for and received legal advice from the attorney regularly retained by Odessa Junior College and was by such attorney advised that he had legal authority to reach a decision not to renew the contract of the plaintiff, if he chose to do so, and that he was under no legal obligation that mandatorily required him to renew the same. This defendant further alleges that he believed then and believes now that he acted entirely in accordance with the law and alleges that his actions were taken only under advice of competent counsel.

FIFTH DEFENSE

This defendant further alleges and shows that his actions were not made by way of retaliation or in bad faith in any manner whatever but were based solely and entirely upon the best interests of Odessa Junior College and represented his discharge of an administrative decision imposed upon him by law and in which decision he is necessarily required to exercise his best judgment, which he did.

SIXTH DEFENSE

This defendant further shows and alleges that no hearing was granted to the plaintiff hereon and none was requested by him until a letter was written by the plaintiff at or simultaneously with the filing of this lawsuit and received by this defendant after he had read of the lawsuit being filed in the newspapers. Neither this defendant nor anyone else was given any opportunity to provide the plaintiff with any sort of hearing until he had been sued in this case and the matter placed in the hands of this Court.

WHEREFORE, premises considered, this defendant prays that the plaintiff take nothing by his suit and this defendant be discharged with his costs.

RAYMOND D. WIER
300 North Jackson Avenue
Odessa, Texas 79760

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W. O. SHAFER

By s/ Lucius D. Bunton
LUCIUS D. BUNTON

ATTORNEYS FOR DEFENDANT
DR. JACK RODGERS

—0—

ORIGINAL ANSWER OF THE DEFENDANTS, CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK AND JOE C. ZANT

(Number and Title Omitted. Filed: Jun 11, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Charles R. Perry, William L. Pettit, Guy Elliott, James F. Ocker, G. Kirk Harding, R. C. Mason, Otto Pavlicek and Joe Zant, in their individual capacities and file this their original answer and for such would respectfully show to the Court the following to-wit:

FIRST DEFENSE

1. These defendants admit the allegations contained in paragraph numbered I. of Plaintiff's Original Complaint.

2. These defendants admit the allegations contained in paragraph numbered II. of Plaintiff's Original Complaint.

3. These defendants admit the allegations contained in paragraph numbered III. of Plaintiff's Original Complaint.

4. These defendants deny the allegations contained in paragraph numbered IV. of Plaintiff's Original Complaint.

5. These defendants admit the allegations contained in paragraph numbered V. of Plaintiff's Original Complaint.

6. These defendants admit the allegations contained in paragraph numbered VI. of Plaintiff's Original Complaint.

7. These defendants deny the allegations contained in paragraph numbered VII. of Plaintiff's Original Complaint.

8. These defendants are without sufficient information to admit or deny the allegations contained in paragraph numbered VIII of Plaintiff's Original Complaint, and therefore deny the same.

9. These defendants admit the allegations contained in paragraph numbered IX. of Plaintiff's Original Complaint.

10. These defendants deny the allegations contained in paragraph numbered X. of Plaitiff's Original Complaint.

11. These defendants admit the allegations contained in paragraph numbered XI. of Plaintiff's Original Complaint.

12. These defendants admit the allegations contained in paragraph numbered XII. of Plaintiff's Original Complaint.

13. These defendants deny the allegations contained in paragraph numbered XIII. of Plaintiff's Original Complaint.

14. These defendants deny the allegations contained in paragraph numbered XIV. of Plaintiff's Original Complaint.

15. These defendants admit the allegations contained in paragraph numbered XV. of Plaintiff's Original Complaint.

16. These defendants deny the allegations con-

tained in paragraph numbered XVI. of Plaintiff's Original Complaint.

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26. These defendants deny the allegations contained in paragraph numbered XXVI. of Plaintiff's Original Complaint.

27. These defendants deny the allegations contained in paragraph numbered XXVII. of Plaintiff's Original Complaint.

SECOND DEFENSE

Subject to such admission heretofore made and such admissions as may be made on the trial hereof, these defendants deny the allegations contained in Plaintiff's Original Complaint and demand strict proof thereof.

THIRD DEFENSE

These defendants allege that the Odessa Junior College entered into a contract with the plaintiff to perform services as a teacher and instructor, which contract expired on May 31, 1969. The Odessa Junior College has done and performed each and every thing it was required to perform under said contract and has discharged its full and complete responsibilities therein and has no further obligation or liability to the plaintiff herein. It is alleged by the plaintiff and it is a fact that Odessa Junior College has no tenure system and none has been acquired by the plaintiff herein and these defendants have no legal obligation in connection therewith.

FOURTH DEFENSE

These defendants further allege and show that the President of Odessa Junior College who is charged by law with the duty of making recommendations to the Board did not recommend to the Board that the contract of the plaintiff be renewed and this Board has no legal authority, under such circumstances, to renew said contract and therefore has no liability of any kind to the plaintiff herein.

FIFTH DEFENSE

These defendants further show and allege that each and every decision made by them in connection with the contract with the plaintiff was made in the utmost good faith, under legal advice, and in compliance with and pursuant to the laws of the State of Texas with which they are bound and obligated to comply.

WHEREFORE, premises considered, these defendants pray that the plaintiff take nothing by his suit and these defendants be discharged with their costs.

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W. O. SHAFER

By s/ Lucius D. Bunton
LUCIUS D. BUNTON

ATTORNEYS FOR DEFENDANTS
CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK AND JOE C. ZANT.

—0—

AFFIDAVIT IN SUPPORT OF A MOTION FOR AN INJUNCTION

(Number and Title Omitted. Filed: Jul 14, 1969)

Robert Sindermann, being first duly sworn, on oath deposes and presents the following:

1.

That he is the Plaintiff in the hereinabove styled case.

2.

That his contract with Odessa Junior College was not renewed for the school year 1969-1970.

3.

That he was given no written charges as to the reasons for his contract not being renewed.

4.

That the only statements in regards to the reasons for his contract not being renewed was an 11 page press release issued by the Defendant, Dr. Jack Rodgers.

5.

That the only reasons gleaned from the above mentioned press release as to the Plaintiff's contract not being renewed were his participation in the public controversial issues.

6.

That the Plaintiff was given no hearing of any nature by any person or body connected with Odessa Junior College before the decision was made on May 16, 1969, not to renew his contract.

7.

That this affidavit is made in the support of a motion for Injunction in which this court should order the Defendants to maintain the same contractual relationship with the Plaintiff that it had for the school term 1968-1969: In that the Defendants should be ordered to hold a hearing along the lines established by the Texas Coordinating Board.

s/ Robert P. Sindermann
ROBERT P. SINDERMANN

SUBSCRIBED and SWORN to before me this 27th day of May, 1969.

s/ Chris Horn
Chris Horn, A Notary Public in
(SEAL) and for Ector County, Texas
My commission expires June 1971.

—0—

ORDER DENYING PETITION FOR TEMPORARY RESTRAINING ORDER

(Number and Title Omitted. Filed: Jul 15, 1969)

Came on to be considered the Plaintiff's Petition for Temporary Restraining Order in the above cause, and the Court, having considered the Petition, the briefs filed herein and heard the oral argument of counsel, is of the opinion that said Petition for Temporary Restraining Order should be, and hereby is DENIED.

ENTERED THE 15th day of July, 1969.

s/ Ernest Guinn
UNITED STATES DISTRICT JUDGE

—0—

MOTION TO DISMISS OF THE DEFENDANT BOARD OF REGENTS OF ODESSA JUNIOR COLLEGE

(Number and Title Omitted. Filed: Jul 18, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the defendant, the Board of Regents of Odessa Junior College and moves the Court to dismiss this suit insofar as it relates to the Board of Regents of Odessa Junior College as a party defendant, and as grounds for such motion would respectfully show to the Court the following, to-wit:

1.

In Paragraph IV of the Plaintiff's Original Complaint, the Board of Regents of Odessa Junior College, as a body, is made a party defendant in this case and it is alleged therein that such Board of Regents is "a body corporate duly organized and existing under the general laws of the State of Texas."

Whether the Board as such is a "body corporate" may be subject to question but whether it is or whether it is not, still yet it is not a proper party to this suit. A "Board" as such is not a person within the meaning of 42 U.S.C.A. § 1983 under which this lawsuit is brought. Neither is the "Board" a proper party under 28 U.S.C.A. § 1343.

In the case of **Roberts v. Trapnell**, 213 Fed. Sup. 47 (1962) the Court had before it a suit against a municipal corporation and the governing board of such municipality. The Court dismissed the suit which was brought under 42 U.S.C.A. § 1983 and stated its reasons therefor as follows:

"(1) Lower Merion Township, a municipal corporation, is a First Class Township and governed by the Pennsylvania First Class Township Code, 53 P.S. § 55101 et seq. Under such Code, the corporate power of a township of the first class is vested in the Board of Township Commissioners. See 53 P.S. § 56502. The Board has the general power to prescribe the manner in which the powers of the Township are to be carried out and to regulate the affairs of the Township.

(2) The Civil Rights Act under which this action was brought does not include municipalities within the definition of "persons" who may be sued for violation of § 1983. Monroe v. Pape, 365 U.S. 167,187,191,81 S.Ct. 473, 5 L.Ed. 2d 492(1961); Egan v. City of Aurora, Ill., 365 U.S. 514, 81 S.Ct. 684, 5 L.Ed. 2d 741 (1961); Hewitt v. City of Jacksonville, 188 F. 2d 423, 424, (5th Cir. 1951), cert. den., 342 U.S. 835, 72 S.Ct. 58, 96 L.Ed. 631 (1951); Charlton v. City of Hialeah, 188 F.2d 421, 423.(5th Cir. 1951).

(3) In this case, the Complaint against the "Commissioners of Lower Merion Township" will be dismissed for failure to state a claim on which relief can be granted in this court and for lack of jurisdiction over the subject matter. The "Commissioners of Lower Merion Township," who comprise the Board possessing the corporate power of the municipal corporation, were sued as a legal entity. This Complaint cannot be sustained under 42 U.S.C.A. § 1983. Handy Cafe, Inc., v. Justices of the Superior Court, 248 F.2d 485 (1st Cir. 1957), cert. den. 356 U.S. 902, 78 S.Ct. 561, 2 L.Ed.2d 580 (1958). See Monroe v. Pape, supra,

and Egan v. City of Aurora, supra. There is no diversity of citizenship."

Again, in the case of **Johnson v. Hackett,** 284 Fed. Sup 933 (968) the Court had before it another suit against a municipal corporation and the governing body of such corporation. The Court again dismissed the complaint as against the township and as against the Board and disposed of the matter summarily in a very brief statement as follows:

"(1, 2) Bristol Township, a municipal corporation, is not a "person" subject to suit under the Act, Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed. 2d 492 (1961). Under Pennsylvania law, the corporate power of townships of the first class is vested in the Board of Commissiners. 53 P.S. § 56502. As a body politic, the Board is likewise not subject to suit under the Act. Roberts v. Trapnell, 213 F. Supp. 47 (E.D.Pa. 1962). No attempt has been made to sue the Commissioners individually.

The complaint will be dismissed as to Bristol Township and the Board of Commissioners."

The Supreme Court of the United States in a unanimous opinion insofar as this particular point was concerned, set this matter at rest long ago in the case of **Monroe v. Pape,** 365 U.S. 167, 5 L.Ed.2d492, 81 S.Ct. 473, when Mr. Justice Douglas, delivering the opinion for the entire Court, stated as follows:

"The response of the Congress to the proposal to make municipalities liable for certain actions

being brought within federal purview by the Act of April 20, 1871, was so antagonistic that we cannot believe that the word "person" was used in this particular Act to include them. Accordingly we hold that the motion to dismiss the complaint against the City of Chicago was properly granted."

The above language of Mr. Justice Douglas makes it absolutely and totally clear that the word "person" as used in Section 1983, was not intended to include corporate entities or, for that matter, the Boards in whose hands the affairs of the corporate entity are entrusted.

WHEREFORE, premises considered, the defendant The Board of Regents of Odessa Junior College, as such, respectfully moves the Court to dismiss the cause of action as to it and that all costs incurred in that connection be assessed against the plaintiff.

RAYMOND D. WIER
300 North Jackson Avenue
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P. O. Box 1552, Odessa, Texas

By s/ W. O. Shafer
W. O. SHAFER

ATTORNEYS FOR DEFENDANT
THE BOARD OF REGENTS OF
ODESSA JUNIOR COLLEGE

—0—

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF THE DEFENDANTS, CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK AND JOE C. ZANT, INDIVIDUALLY, AND DR. JACK RODGERS, INDIVIDUALLY AND AS PRESIDENT OF ODESSA JUNIOR COLLEGE

(Number and Title Omitted. Filed: Jul 18, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Charles R. Perry, William L. Pettit, Guy Elliott, James F. Ocker, G. Kirk Harding, R. C. Mason, Otto Pavlicek and Joe C. Zant, individually, and Dr. Jack Rodgers, individually and as President of Odessa Junior College, defendants in the above entitled and numbered cause, and move the Court to grant them a summary judgment in this cause and as grounds therefor respectfully show to the Court the following:

I.

The pleadings and affidavits on file conclusively show that there is no justiciable issue of fact in this case and that these defendants are entitled to judgment as a matter of law.

II.

The Plaintiff's Original Complaint in this case by which he is irrevocably bound confesses and admits that these defendants acted not only upon adequate cause but upon severe provocation in declining to enter into a new contract of employment with the plaintiff in the case.

III.

The pleadings on file in this case and particularly the pleadings of the plaintiff herein, establish as undisputed the following facts:

(a) That the plaintiff was employed as a teacher at Odessa Junior College for the school year 1968-1969, which ended May 31, 1969. (Plaintiff's Original Complaint, Par. VI)

(b) That Odessa Junior College has no tenure system and this fact was not only known to the plaintiff at the time he entered into his original contract with the College but such fact was affirmatively stated in the Faculty Guide which was in use at the time of the commencement of his employment, as well as at all times pertinent hereto. (Plaintiff's Original Complaint, Par. VII; Plaintiff's Appendix "A", page 3)

(c) That on the afternoon of April 22, 1969 the plaintiff requested permission from the President of the College to be absent from his classroom and his teaching duties for the purpose of appearing and testifying at Austin, Texas in support of certain legislation. This permission was denied and refused by the President of the College, whose decision in such matters is final under the provisions of the Faculty Guide. In spite of the refusal, the plaintiff was absent from his classes and went to Austin to testify in connection with the legislation involved but no hearing was held. Again, under date of April 25, 1969 the plaintiff, by letter, requested permission from the Chairman of his Department to be absent from his classes on April 28, 1969 for the purpose again of going to Austin to testify in support of certain legislation. The plaintiff was again denied permission to

be absent from his classroom duties and this refusal was delivered in writing to his home on April 26, 1969. In spite of this refusal by his superiors, the plaintiff by letter dated April 27, 1969 advised the Chairman of his Department that he would be absent anyway on April 28, 1969, and he was so absent from his classes contrary to the instructions of the Administration. (Plaintiff's Appendix "A", Pages 7 and 8). Plaintiff affirmatively pleads in his Complaint and it is his position that these absences were "unauthorized" and without "the College Administration's approval". (Plaintiff's Original Complaint, Par. XII)

(d) That as an integral part of his case, plaintiff's position is that the undisputed, willfull and unauthorized absences from his classroom are not "sufficient cause for the dismissal of a faculty member". (Plaintiff's Original Complaint, Par. XIII)

(e) That this is not a case in which the contract existing between the plaintiff and Odessa College was terminated but it is a case in which the plaintiff seeks to force the College to make a new contract with him for a new and different school year, to-wit: 1969-1970. (Plaintiff's Original Complaint, Par. XV)

(f) That the plaintiff had written notice of the reason for his contract not being renewed at least on May 23, 1969, which was the date on which this suit was filed because he was at that time in possession of Appendix "A" attached to his Complaint in which his denial of constituted authority and willful insubordination by violating written instructions was clearly set out.

(g) That in the Appendix attached to Plaintiff's

Original Complaint it is affirmatively shown that his activities in connection with a Committee has never been called to his attention by any member of the Board of Regents or by any member of the Administration. The plaintiff does not plead any facts in his Original Complaint in contradiction or in derogation of this portion of the Appendix upon which he relies and bases his case. Neither does he plead at any place in his Complaint where his constitutional or civil rights were denied him or refused him, but, on the contrary, his pleading and his attachments affirmatively show that he at all times fully exercised all such rights. His pleadings do show that his actions in connection with the Committee in question were in clear violation of the statement on Academic Freedom as adopted by Odessa Junior College. (Appendix "A", page 6) (Academic Responsibility Appendix "C", Page 2 and 3)

(h) That under date of May 19, 1969 the President of Odessa Junior College furnished Mr. Sindermann with a statement indicating the basis for his contract not being renewed. (This letter is an Appendix to Plaintiff's Original Complaint but is not identifed by letter or number.)

Each and all of the above and foregoing facts are established without contradiction or dispute by the plaintiff's own pleadings in this case and are not only admitted by him but are relief upon by him and constitute judicial admissions.

IV.

The thrust of the plaintiff's pleading is to seek relief to which he is not entitled under his own pleadings. His pleadings show that the contract under which he was employed has expired. He asks this

Court to make a new contract for him by forcing the Board of Regents in a non-tenure college, in a non-tenure state, to employ him for an additional period of time and for a different school year than that for which he was employed.

V.

The basis for his suit is without foundation in law, and seeks to unilaterally create a contract that does not exist by imposing terms upon the Regents which they did not accept when the contract was made.

VI.

His basic and fundamental premise is to superimpose upon Odessa Junior College the requirements of a tenure college, which it is not, and by such superimposition thereby creating for himself an artificial denial of constitutional rights and due process by ignoring the fact that his dismissal was upon adequate cause under a tenure or non-tenure policy. Even if this premise, for the purpose of this motion only, is considered by the Court, still yet, the plaintiff's case must fall. His interpretation of due process as pleaded by him is notice of his charges and a hearing. It is undisputed and without question that he has received notice of the charges against him and the reasons for his dismissal. A hearing would be futile and superfluous. The only purpose that could be served by a hearing would be to determine the sufficiency of his derelictions. The reasons for his dismissal are established as a fact without dispute or controversy. His own pleadings affirmatively show a complete violation and disregard of affirmative instructions from the Administration on two occasions within a period of ten days. The question involved is

one of discipline and authority. It strikes at the very heart of an orderly administration of college affairs by constituted authority. The question of whether his deliberate and willful violation of the written orders of his superiors on two occasions is sufficient and adequate grounds for his contract not being renewed is a matter of law for the Court. There is no fact issue involved to be determined at any hearing whether such hearing be before this Court or before a faculty committee or before any other body. It is conclusively and undeniably established by the record in this case that the violations deliberately and willfully occurred. The only question remaining in the case is one of law; to-wit: whether or not such violations are adequate reasons for non-renewal of the contract.

Therefore, even if it be conceded, for the purpose of this motion only, that due process, i.e., notice and hearing, are involved in this case, then plaintiff has established by his own pleadings that he has had ample notice and that no purpose could be served by a hearing of any kind before any Court or any body or any committee. Not only has he flaunted his insubordination before his superiors at the College, but he now flaunts that same insubordination before this Court by pleading affirmatively his willful disregard of written instructions of his superiors. The matter is one solely and entirely of discipline for insubordination. As a matter of law, the insubordination is not only adequate and sufficient reason for the nonrenewal of this contract, but are in fact compelling and imperative if there is any hope for discipline to be maintained in Odessa Junior College.

The authorities cited by the plaintiff to this Court have no application whatever to a disciplinary pro-

blem such as here presented under the most favorable interpretation of the plaintiff's pleading in this case. Even the Supreme Court of the United States recognizes this distinction and understands the problem involved. In the case of **Pickering v. Board of Education,** 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731, which case is the heart of plaintiff's authorities, recognizes that discipline by immediate superiors is of the highest priority in the operation of any school or college. In reaching its decision in that Pickering case, the Supreme Court of the United States said:

"**Thus no question of maintaining either discipline by immediate superiors** or harmony among co-workers is presented here." (Emphasis mine)

It could not be seriously contended by the plaintiff that freedom of speech includes the right to make trips to foreign cities over the objections and instructions of plaintiff's superiors, and absent himself from his classroom and his duties. (If such were true, a private first class in the army at San Francisco, would have the right to go to Washington to appear before the Congress on defense spending—regardless of the wishes of his commanding officer.)

VII.

Under any theory or any interpretation of plaintiff's pleadings, there is no fact issue in this case, nothing remains to be adjudicated, and the question presented is one only of law for determination by the Court.

WHEREFORE, premises considered, these defendants pray that judgment be entered for each

and all of them and costs be assessed against the plaintiff.

RAYMOND D. WIER
300 North Jackson Avenue
Odessa, Texas 79760

SHAFER, GILLILAND, DAVIS,
BUNTON & McCOLLUM
P. O. Box 1552, Odessa, Texas

B s/ W. O. Shafer
W. O. SHAFER

ATTORNEYS FOR DEFENDANTS CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK AND JOE C. ZANT, INDIVIDUALLY, AND DR. JACK RODGERS, INDIVIDUALLY AND AS PRESIDENT OF ODESSA JUNIOR COLLEGE

—0—

AFFIDAVIT IN SUPPORT OF A MOTION OPPOSING SUMMARY JUDGMENT

(Number and Title Omitted. Filed: Jul 28, 1969)

Robert Sindermann, being first duly sworn, on oath deposes and presents the following:

1.

That he is the Plaintiff in the hereinabove styled case.

2.

That his contract with Odessa Junior College was not renewed for the school year 1969-1970.

3.

That he was given no written charges as to the reasons for his contract not being renewed.

4.

That the only statements in regards to the reasons for his contract not being renewed was an 11 page press release issued by the defendant, Dr. Jack Rodgers.

5.

That the only reasons gleaned from the above mentioned press release as to the Plaintiff's contract not being renewed were:

(1) His participation in the movement to elevate Odessa Junior College to a four year status;

(2) His name being appended to an ad which appeared in the local newspaper;

(3) His unapproved absence from the school on two occasions.

6.

That in leaving the school on the two occasions without getting administrative approval, the plaintiff felt he must testify before the Texas Senate's State Affairs Committee because the bill pending before that committee was sponsored by the group which the Plaintiff is the head of, Texas Junior College Teachers Association, and because he was invited to do so by Senator Moore the head of that committee.

7.

After not being able to obtain approval from the school, the Plaintiff relied upon the following statement in the Odessa College **Faculty Guide,** found on page 53:

> "The employee shall have 1/180 of his annual salary deducted for each day of such absences not approved by the departmental chairman, the dean of the college, or the president."

Plaintiff understood that this would be the only contractual penalty permissable to be imposed upon him for such absences and would not be the basis for the non-renewal of his contract.

8.

That the Plaintiff was given no hearing of any nature by any person or body connected with Odessa Junior College before the decision was made on May 16, 1969, not to renew his contract.

9.

That this affidavit is made in support of a Motion opposing Summary Judgment.

s/ Robert P. Sindermann
ROBERT P. SINDERMANN

SUBSCRIBED and SWORN to before me this 25th day of July, 1969.

s/ Sarah Lewallen,
Sarah Lewallen, A Notary Public
(SEAL) in and for Ector County, Texas
My commission expires June 1971.

MOTION OPPOSING DEFENDANT BOARD OF REGENTS OF ODESSA JUNIOR COLLEGE'S MOTION TO DISMISS AND BRIEF IN SUPPORT OR PLAINTIFF'S MOTION

(Number and Title Omitted. Filed: Jul 24, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Robert P. Sindermann as above captioned moves the court to refuse Defendant Board of Regents of Odessa Junior College's Motion to Dismiss Plaintiff's cause against it and would show the Court as follows:

1.

Plaintiff sued the Defendant Board of Regents of Odessa Junior College for their actions in depriving him, and for all others similarly situated of his constitutional rights. The Plaintiff alleged that they acted under the color of state law and such grounds for this suit are to be found in the Plaintiff's Original Complaint and the case law in support of the Complaint is to be found in Plaintiff's brief which was submitted to the court in defense of said complaint.

WHEREFORE, Plaintiffs having pleaded their right to sue Defendant Board of Regents of Odessa Junior College as aforesaid, they pray the Court refuse the aforesaid Defendant's motion to dismiss.

LAW OFFICES OF BURNETT AND CHILDS
Box 3707
Odessa, Texas

by Richard J. Clarkson
Richard J. Clarkson
ATTORNEYS FOR THE PLAINTIFFS

NOTE: Portion of Record Omitted—Filed in its Original Form

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MOTION FOR LEAVE TO AMEND PLEADINGS

(Number and Title Omitted. Filed: Jul 31, 1969)

TO THE HONORABLE COURT:

Plaintiff moves under Rule 15, Federal Rules of Civil Procedure, for leave of Court to file First Amended Complaint.

This Motion is not for purposes of delay, but that justice may be had by stating all elements of complaint that Plaintiff feels are basis for his request for permanent reinstatement on the faculty of Odessa Junior College.

Respectively submitted:

BURNETT & CHILDS
P. O. Box 3707
Odessa, Texas

By: s/ Richard J. Clarkson
Richard J. Clarkson
ATTORNEY FOR PLAINTIFFS

NOTE: Portion of Record Omitted—Filed in its Original Form.

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ORDER GRANTING PLAINTIFF LEAVE TO AMEND COMPLAINT

(Number and Title Omitted. Filed: Jul 31, 1969)

Leave of Court is hereby granted Plaintiff to file their First Amended Complaint.

SO ORDERED, this, the 31st day of July, 1969.

s/ Ernest Guinn

UNITED STATES DISTRICT JUDGE

—0—

PLAINTIFF'S FIRST ORIGINAL AMENDED COMPLAINT

(Number and Title Omitted. Filed: Jul 31, 1969)

NOW COMES the Plaintiff, through his attorneys, Warren Burnett and Richard J. Clarkson, and as and for a cause of action, on behalf of himself and on behalf of all who are similarly situated, and against the Defendants, alleges the following:

I.

That this Court has jurisdiction in this cause over all parties under 42 U.S.C., Sec. 1983, and 28 U.S.C., Sec. 1343.

II.

That the Plaintiff, ROBERT P. SINDERMANN, is a citizen of the United States and a resident of Odessa, Ector County, Texas.

III.

That the Defendants, CHARLES R. PERRY, WILLIAM L. PETTIT, GUY ELLIOTT, JAMES F. OCKER, BETTY DOOLEY, G. KIRK HARDING, R. C. MASON, OTTO PAVLICEK, JOE

C. ZANT, are citizens of the United States and residents of the City of Odessa, Ector County, Texas, and can be served with process at the following addresses:

Charles R. Perry
Peters & Fields Building
800 Central Drive
Odessa, Texas

William L. Pettit
2326 Field
Odessa, Texas

Guy Elliott
2500 E. 8th Street
Odessa, Texas

James F. Ocker
2709 Fair Oaks
Odessa, Texas

Betty Dooley
2926 Chisum
Odessa, Texas

G. Kirk Harding
5003 Kingston
Odessa, Texas

R. C. Mason
1415 Emerald
Odessa, Texas

Otto Pavlicek
2318 N. Grant
Odessa, Texas

Joe C. Zant
J. C. Zant Engineering Co.
Country Club Estates
Odessa, Texas

IV.

That the Defendant, Board of Regents of Odessa Junior College is a body corporate duly organized and existing under the general laws of the State of Texas, having the power to sue and to be sued in its corporate capacity, Vernon's Annotated Civil Statutes of Texas, Art. 2815h, Sec. 20, which governs and manages the branch of higher education in the State of Texas known as Odessa Junior College, and may be served by serving Charles R. Perry, President of said Board of Regents, at Peters and Fields Building, 800 Central Drive, Odessa, Texas.

V.

That the Defendant, Dr. Jack Rodgers, is President of Odessa Junior College, which college is located in Odessa, Texas, and that the said Dr. Jack Rodgers, by and through the authority delegated to him by the Defendant Board of Regents, directs, governs and manages the said college. Said Defendant, Jack Rodgers, may be served, both individually and in his capacity as President of said college, by process of service at his office at Odessa Junior College.

VI.

That the Plaintiff was retained by the Defendants as a lecturer to teach Government in the Department of Social Sciences at Odessa Junior College for the school year of 1968-1969, and the Plaintiff performed and continued to perform those duties pursuant to such retention.

VII.

That although Odessa Junior College has no tenure system, the Administration of the college ac-

knowledges the fact that faculty members have "permanent tenure" until the time that their contracts are not renewed. (cf. Appendix "A", page 3). That on October 16, 1967, the Coordinating Board of Texas College and University System adopted guiding principles designed to aid Texas colleges and universities in evaluating the conditions of academic freedom, tenure, and responsibility that prevail on each campus. The Plaintiff has tenure within the guiding principles established by the Coordinating Board, being a teacher in Texas' higher education institutions for ten (10) years, with four (4) of those years being at Odessa Junior College. (Cf. Appendix "B", page 1-2).

VIII.

That the Texas Coordinating Board's statement on academic freedom, tenure and responsibility was published in the bulletin of the American Association of University Professors with that organization's approbation. (Cf. Appendix "C").

IX.

That there have been campaigns in the Permian Basin (Midland-Odessa and surrounding areas) by the local citizenry in support of bills before the Texas Legislature to either elevate Odessa Junior College to a four-year status, or else to build a separate senior college in the Permian Basin. The Plaintiff has been vocal in his expressions of opinion in support of the movement to elevate Odessa College to a four-year status, and such expressions have been in opposition to the public position taken by the Defendant Board of Regents, and Defendant, Dr. Jack Rodgers. (See Appendix "A").

X.

That in a press release issued by the office of Defendant, Jack Rodgers, on May 13, 1969, it was stated that one of the reasons for not renewing the contract of the Plaintiff was his association with the "Committee to Elevate Odessa Junior College." (See Appendix "A").

XI.

That the Plaintiff is State President of the Texas Junior College Teachers' Association, and was invited to appear in that capacity before the Texas Senate's State Affairs Committee by State Senator Oscar Mauzy of Dallas, Texas, and the Chairman of the State Affairs Committee, William T. (Bill) Moore, on proposed academic freedom legislation. (Cf. Appendix "D").

XII.

That in a press release issued by the office of Defendant, Dr. Jack Rodgers, on May 13, 1969, that one of the reasons for the Plaintiff not being retained for the academic year 1969-1970 was his unauthorized trip to Austin, Texas, to testify without receiving the college Administrations' approval. (Cf. Appendx "A").

XIII.

That the Odessa College **Faculty Guide** states that the penalty to be exacted for any unauthorized absences on the part of faculty members is: "The employee shall have 1/180 of his annual salary deducted for each day of such absence not approved by the departmental chairman, the Dean of the College, or the President." This penalty was exacted for both absences. (Cf. Appendix "G", p. 53).

XIV.

That the criteria for retention of teaching personnel as found in the Odessa College Faculty Guide are in violation of the First and Fourteenth Amendments to the United States Constitution in that they are vague and overbroad. (Cf. Appendix "G", p. 54).

XV.

That the Plaintiff was required by the **Faculty Guide** of Odessa College to accept and observe criteria of public and private "conduct" acceptable to the community and to the college was a requirement of such vagueness and overbreadth as to deprive the Plaintiff of his First and Fourteenth Amendment rights under the United States Constitution. (Cf. Appendix "G", p. 54).

XVI.

That the Plaintiff was required to support the goals and objectives of the college once they had been set by the majority of the faculty, administration, and Board of Regents, and such requirement was in violation of the Plaintiff's First and Fourteenth Amendment rights under the United States Constitution. (Cf. Appendix "G", p. 54).

XVII.

That those reasons for the Plaintiff's contract not being renewed as found in paragraphs X and XII above are the only ascertainable reasons for such action by the Defendants, no formal charges having been sent to the Plaintiff by said Defendants, are in nowise sufficient cause for the dismissal of a faculty member with tenure as established by the Coordinating Board of Texas College and University Sys-

tem, in its statement of October 16, 1967, namely:

"Professional incompetence, moral turpitude, or gross neglect of professional responsibilities." (Cf. Appendix "B"; page 2).

XVIII.

That ten members of the faculty of the Social Science Department of Odessa Junior College signed a statement attesting to the fact that the Plaintiff is a totally competent person professionally, and that nothing he has said or done has, in any way, derogated from his competence in the classroom as a lecturer in Government at the college. This is all but a few members of his Department. (Cf. Appendix "E").

XIX.

That the Plaintiff was advised on May 19, 1969, by the Defendant, Dr. Jack Rodgers, purporting to act under due authority, that his contract would not be renewed for the year 1969-1970. (Cf. Appendix "F").

XX.

That the Defendants or their agents, refused to give any reasons to the Plaintiff for their decision to not retain him as a member of Odessa Junior College faculty for the school year 1969-1970, and also that the Defendants did not offer the Plaintiff an impartial hearing into the merits of such decision.

XXI.

That the reason for such decision by the Defendants, or their agents, was to retaliate against the Plaintiff for the Plaintiff's expressions of opinion.

XXII.

That the Defendants' decision not to retain the Plaintiff was not based upon good faith on their part.

XXIII.

That the decision of the Defendants is a denial, a violation, a restraint, and a deprivation of the Plaintiff's rights to free speech under the United States Constitution.

XXIV.

That the decision of the Defendants was not made under ascertainable and definite standards governing the Defendants in making this decision.

XXV.

That the Defendants, or their agents, have intimidated and harassed the Plaintiff and other Odessa Junior College faculty members similarly situated because the Plaintiff and those so situated have exercised their right to free speech in a way critical of the Defendants.

XXVI.

That the conduct of the Defendants has caused, and unless such decision is restrained from enforcement, will cause the Plaintiff damages to his professional reputation and standing for which there is no adequate remedy at law.

XXVII.

That such decision of the Defendants has already caused the Plaintiff to suffer actual damages to his reputation, to his ability to obtain similar employment in other colleges in the State of Texas, damages in the amount of Two Hundred Seventy-Five Thousand Dollars ($275,000.00).

XXVIII.

That such decision of the Defendants was retaliatory in nature and not based upon good faith, and that they, therefore, should be liable for punitive damages in the amount of Two Hundred Thousand Dollars ($200,000.00).

XIX.

That because the actions of the Defendants necessitated that the Plaintiff retain attorneys in order to obtain his United States Constitutional rights, the Defendants should be held liable for reasonable attorneys' fees.

XXX.

That the Plaintiff brings this action on behalf of himself, on behalf of many of the Odessa Junior College faculty members too numerous to join herein, who have been intimidated and harassed by the Defendants, or their agents, for expressing their opinions, and on behalf of many Odessa Junior College faculty members too numerous to join herein, who have become fearful and reluctant to express their opinions because of the conduct of the Defendants as described herein.

WHEREFORE, the Plaintiff demands the following relief:

(1) A judgment that the decision of the Defendants that the Plaintiff not be retained as a member of the Odessa Junior College faculty for the school year 1969-1970, is in violation of the Plaintiff's rights, and in violation of the rights of those similarly situated, under the First and Fourteenth Amendments to the United States Constitution.

(2) That the Defendants are to grant to the Plaintiff a hearing on the reasons for his dismissal in substantial compliance with the recommendations set out by the Coordinating Board, Texas College and University System, as contained in the attached Appendix "B", namely: The Defendants should give formally written charges to the Plaintiff. Presentation of such charges should provide for (a) a written response to the charges by the faculty member, if he wishes a hearing; (b) Opportunity by the faculty member to exercise his right to be represented by counsel of his own choosing, to have a hearing before a regularly elected faculty committee, to confront and cross-examine witnesses, to know the name and statement of a witness who, for extraordinary reasons, does not appear at the hearing, to respond orally to charges made against him, to have findings and recommendations made on each of the charges, and to be given a complete transcript of the hearing, including the findings of the faculty committee; (c) a review of the case, if essential, by an appropriate reviewing body—the review to include the findings and recommendations of the hearing committee, the opportunity of the faculty member and University representative for oral argument, the return of the proceeding to the hearing committee, if the original recommendations are not sustained, the study of the hearing committee's reconsidered findings and recommendations, and a rendering of a final decision (which should be written in the rare case in whch the hearing committee is overruled).

(3) A judgment that the failure of the Defendants to provide the Plaintiff with an impartial

hearing as to the merits of their decision of May 6, 1969, was arbitrary, capricious, and contrary to the Plaintiff's rights, and the rights of those similarly situated, under the First, Fifth and Fourteenth Amendments to the United States Constitution.

(4) A judgment that the refusal of the Defendants to give reasons for their decision was arbitrary, capricious, and in violation of the rights of Plaintiff and those similarly situated, under the First, Fifth, and Fourteenth Amendments to the United States Constitution.

(5) A judgment that the failure of the Defendants to make such decision under ascertainable and finite standards was arbitrary, capricious, and in violation of the rights of Plaintiff and those similarly situated, under the First, Fifth and Fourteenth Amendments to the United States Constitution.

(6) An order of the Court directing the Defendants to retain the Plaintiff in his position as a member of the Odessa Junior College faculty for the year 1969-1970, at the same level of responsibility and function as per the retention for the school year 1968-1969.

(7) That a date be set on the court's docket for a trial on the damages alleged in this complaint, and

(8) for such other and further relief as may be equitable.

LAW OFFICES OF BURNETT &
CHILDS
P. O. Box 3707
ODESSA, TEXAS

By: s/ Richard J. Clarkson
RICHARD J. CLARKSON
ATTORNEYS FOR THE PLAINTIFF

PLAINTIFF DEMANDS TRIAL BY JURY

NOTE: APPENDIX A through F omitted; heretofore copied on pages 13 through 41.

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AFFIDAVIT IN SUPPORT OF APPENDICES A, B, C, D, E, F, AND G OF PLAINTIFF'S FIRST AMENDED COMPLAINT

(Number and Title Omitted. Filed: Jul 31, 1969)

ROBERT P. SINDERMANN, being first duly sworn, on Oath deposes and presents the following:

1.

That he is the Plaintiff in the hereinabove styled case.

2.

That Appendix A of Plaintiff's First Amended Complaint is a true and exact copy of a press release issued by the office of Defendant, Dr. Jack Rodgers, of May 13, 1969.

3.

That Appendix B of Plaintiff's First Amended Complaint is a true and exact copy of the Coordinating Board Texas College and University System's Policy Paper Number One, dealing with its guideline concerning academic freedom, tenure, and responsibility.

4.

That Appendix C of Plaintiff's First Amended Original Complaint is a true and exact copy of the American Association of University Professors Republication of the Texas Coordinating Board's statement on academic freedom, tenure, and responsibility.

5.

That Appendix D of Plaintiff's First Amended Original Complaint is a true and exact copy of a telegram sent to the Plaintiff by Texas Senator Oscar Mouzy; and a letter sent to the Plaintiff by Texas State Senator Bill Moore; and a letter sent to Plaintiff by Texas State Senator Oscar Mouzy.

6.

That Appendix E of Plaintiff's First Amended Original Complaint is a true and exact copy of an attestation as to the professional competency of the Plaintiff signed by ten members of the Social Science Department of Odessa Junior College.

7.

That Appendix F of Plaintiff's First Amended Original Complaint is a true and exact copy of the letter sent to Plaintiff by Defendant Dr. Jack Rodgers, announcing that the Plaintiff's contract would no be renewed with the college.

8.

That Appendix G of Plaintiff's First Amended Original Complaint is a true and exact copy of Odessa College's **Faculty Guide.**

9.

That the Plaintiff knows of his own personal knowledge that the above referred to appendices are true and exact copies of what they purport to be.

10.

That this affidavit is made in support of the Appendices A through G which are attached to the Plaintiff's First Amended Original Complaint.

s/ Robert P. Sinderman

THE STATE OF TEXAS)
)
COUNTY OF ECTOR)

Subscribed and sworn to before me the undersigned authority on the 28th day of July, 1969.

s/ Sarah Lewallen

Sarah Lewallen, Notary Public in and for Ector County, Texas
My commission expires June, 1971.

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NOTE: Portion of Record Omitted—
Filed in its Original Form

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MOTION OPPOSING DEFENDANT BOARD OF REGENTS', BOTH INDIVIDUALLY AND OFFICIALLY, AND DR. JACK RODGERS', BOTH INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT OF PLAINTIFF'S MOTION

(Number and Title Omitted. Filed: Aug. 1, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Robert P. Sindermann as above captioned moves the Court to refuse the Defendants' motion for Summary Judgment and would show the Court as follows:

1.

Plaintiff sued the Defendants for their actions in depriving him, and for all others similarly situated, of his constitutional rights. Plaintiff alleged that they acted under the color of state law and such grounds for this suit are to be found in the Plaintiff's First Amended Complaint and the case law in support of the Complaint is to be found in Plaintiff's brief which was submitted to the Court in defense of said Complaint.

2.

The pleadings and affidavit on file conclusively show that there are justiciable issues of fact in this case, and that the Defendants are not entitled to judgment as a matter of law.

3.

The fact issues that are before this Court are numerous:

(1) Was one of the reasons that the Plaintiff's contract was not renewed, his association with the "Committee to Elevate Odessa Junior College" (Paragraph X of Plaintiff's First Amended Complaint)?

(2) Have any actions on the part of the Plaintiff interfered with his effectiveness in the classroom (Paragraph XVIII of Plaintiff's First Amended Complaint)?

(3) Was the reason that the Defendants did not renew the Plaintiff's contract one motivated by a desire to retaliate for the Plaintiff's political activities (Paragraph XXI of Plaintiff's First Amended Complaint)?

(4) Was the Defendants decision not to renew the contract of the Plaintiff based upon a lack of good faith on their part (Paragraph XXII of Plaintiff's First Amended Complaint)?

(5) Was there any indication in the **Faculty Guide** or otherwise that would indicate to the Plaintiff that his two unauthorized absences could be the basis of the nonrenewal of his contract (paragraphs XXIV and XIII of Plaintiff's First Amended Complaint)?

(6) Have the Defendants or their agents so acted as to intimidate the Plaintiff and other Odessa Junior College faculty members similarly situated so as to deprive them of their constitutional rights to free speech (Paragraphs XXV and XXVI of Plaintiff's First Amended Complaint)?

WHEREFORE, Plaintiffs having pleaded and shown fact issues of constitutional dimensions which are to be in large part, determinative of Plaintiff's

right to reinstatement on the faculty of Odessa Junior College, they pray the Court refuse the aforesaid Defendants' motion for Summary Judgment.

Respectfully submitted,

LAW OFFICES OF BURNETT & CHILDS
P. O. Box 3707
Odessa, Texas 79760

By: s/ Richard J. Clarkson
RICHARD J. CLARKSON
ATTORNEYS FOR PLAINTIFFS

NOTE: Portion of Record Omitted—
Filed in its Original Form

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ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Number and Title Omitted. Filed: Aug 4, 1969)

Came on to be considered the Defendants' Motion to Dismiss the Defendant Board of Regents of Odessa Junior College, and the Court having considered same, is of the opinion that same should be DENIED, and it is so ORDERED.

Then came on to be considered by the Court the Motion for Summary Judgment, together with the exhibits and affidavits filed herein by the Defend-

ants, and the briefs filed herein by all parties in support of and against said Motion, and the Court having considered same is of the opinion that same is well taken for the following reasons, and so finds:

I.

Plaintiff's tenure of employment ended May 31, 1969.

II.

Odessa Junior College has no tenure system which fact was known to the Plaintiff at the time he entered into his original contract with the college.

III.

After the termination of his contract of employment the Defendant college owed no obligation to the Plaintiff.

I conclude:

I.

Plaintiff has no cause of action against the Defendants since his contract of employment terminated May 31, 1969, and Odessa Junior College has not adopted the tenure system.

II.

Plaintiff has no contract with the Defendant college.

III.

Plaintiff has no right which would require Defendants to execute a contract with Plaintiff, or to employ Plaintiff.

IV.

Defendants have not violated any constitutional rights of the Plaintiff.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff take nothing by his suit and that the Defendants do recover their costs, for all of which let execution issue.

ENTERED THIS 4th day of August, 1969.

s/ Ernest Guinn
UNITED STATES DISTRICT JUDGE

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NOTICE OF APPEAL

(Number and Title Omitted. Filed: Aug 15, 1969)

TO THE HONORABLE JUDGE OF SAID COURT.

Notice is hereby given that Robert P. Sindermann, Petitioner, above named, hereby appeals to the United States Court of Appeals for the 5th Circuit from the order granting Summary Judgment entered in this proceeding on the 4th day of August, 1969.

s/ Richard J. Clarkson
RICHARD J. CLARKSON

—0—

APPEAL BOND

(Number and Title Omitted. Filed: Aug 15, 1969)

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the Odessa Junior College Board of Regents and Dr. Jack Rodgers, President of Odessa Junior College, Defendants herein, the sum of TWO

HUNDRED AND FIFTY DOLLARS ($250.00), conditioned that,

WHEREAS, the Plaintiff appealed to the Court of Appeals for the 5th Circuit of Appeals by Notice of Appeal filed herein, from the Order of this Court sustaining the Defendants' Motion for Summary Judgment entered herein. The Plaintiff shall pay all costs adjudged against him if the appeal is dismissed or the Judgment affirmed, or such costs as the Appellate Court may award in the Judgment is modified, then this Bond is to be void, but if the Plaintiff fails to perform this condition, payment of the amount of this Bond shall be due forthwith.

LAW OFFICES BURNETT & CHILDS
P. O. Box 3707
Odessa, Texas 79760

By: s/ Richard J. Clarkson
RICHARD J. CLARKSON

UNITED STATES FIRE INSURANCE COMPANY

By s/ T. B. Harris, Jr.
Attorney in Fact

NOTE: Portion of Record Omitted—
Filed in its Original Form

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CLERK'S CERTIFICATE

I, DAN W. BENEDICT, Clerk of the United States District Court in and for the Western District of Texas, do hereby certify that the foregoing numbered and listed pleadings, orders and instruments are all of the original papers, except for copies of the Civil Docket Sheets, filed and entered in Civil Action MO-69-CA-54, styled Robert P. Sindermann v. Charles R. Perry, et al, as the same appear on file and of record in this office.

I further certify that Items Nos. 20, 21 and 22 of Appellant's Designation of Contents, and being Affidavit in support of appendices "H" and "I", Motion and Order Granting Leave to Add Appendices "H" and "I" and Appendices "H" and "I" are not of record in this office and therefore are not included in this record.

WITNESS my official signature and seal of said District Court at the City of Pecos, Texas, this 26th day of August, 1969.
(SEAL)

DAN W. BENEDICT, Clerk of Court

By s/ James Drane
Deputy Clerk

APPENDIX "H"

Standards of The College Delegate Assembly

OF

THE SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS

December, 4, 1968

A PUBLICATION OF THE
SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS
795, Peachtree Street, N.E. Atlanta, Georgia 30308

For additional information write the Central Office.

STANDARDS OF THE COLLEGE DELEGATE ASSEMBLY OF THE SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS

Principles and Philosophy of The College Delegate Assembly in Accreditation

The College Delegate Assembly of the Southern Association of Colleges and Schools is charged with the responsibility of accrediting institutions of higher learning in the southern region of the United States. This responsibility is exercised through the Commission on Colleges, which considers its principal concern in accreditation to be the improvement of educational quality in the institutions of the area it serves. It is also the responsibilty of the Commission to work with institutions of higher education in Latin America toward mutual understanding and educational cooperation.

The Commission on Colleges sees its task as intimately related to the traditional public philosophy of the United States—that free men can and ought to govern themselves, and that they do so best through a representative, flexible, and responsive system. Accordingly the Commission believes that accreditation with its controls and stimulation can be accomplished best through a voluntary association of non-profit educational institutions.

The Commission asserts the principle that regional accreditation is preferable to state or national because provincialism tends to threaten the smaller

unit, and a national organization may become unwieldly. The boundaries of the accrediting association should not be identified with political framework, either state or national. There are many problems to be shared at the regional level that might not be dealt with effectively in a state or nationwide association. This does not in any way limit the existing cooperation and exchange of ideas with the other regional associations which are largely parallel in aims and functions. The several regional associations in combination form an effective national system for the control and improvement of quality in higher education.

The Commission on Colleges is dedicated to a firm belief in the rights of a teacher to teach, investigate, and publish freely, and in the rights of students to the opportunity of learning. The rights of an institution to fulfill the purposes for which it was founded are held to be incontestable. Sometimes these rights seem to be in conflict; it is then that the Commission must attempt to bring into harmony the counterclaims to freedom of the individual, the institution, and society. The Commission also stands ready to protest in the name of academic integrity when the educational effort is hampered by political interference, or is in any way menaced by those who would subvert the search for truth.

With this general philosophy which affirms that accreditation should be based on mutual, voluntary assistance at a regional level in an atmosphere of academic freedom, the Commission on Colleges has developed after long experience certain criteria and procedures. The Commission consists of representatives elected by the College Delegate Assembly and

fulfills its functions through appropriate committees. Much of the labor of the Commission goes into establishing the qualitative and quantitative criteria against which an institution is evaluated to determine its effectiveness, and its acceptability in the academic world and the society of which it is a part.

As a basic principle, the Commission regards its function of accreditation as accrediting an institution as a whole. It recognizes that accreditation of professional schools, divisions, or departments within complex universities is also provided by other recognized accrediting organizations. Although it cooperates with these agencies for professional accreditation, the Commission retains the right and responsibility of assuring that the total program of a complex institution is coordinated, administered, and held in proper balance. Cooperation with professional agencies does not limit in any way the Commission's right to accredit the total institution. It becomes the responsibility of the Commission, furthermore, to evaluate the work of specialized schools, divisions, or departments when they are not accredited by the appropriate professional agencies.

The Standards which the Commission has developed apply to initial applications, to member institutions, and to the Institutional Self-Study Program. Ths statement of Principles and Philosophy of the College Delegate Assembly in Accreditation is considered not only as an introduction to the Standards, but is also of equal force with the eleven Standards.

With the exception of the Standard on Purpose, each Standard is presented in two parts. The statement of principles under each Standard can be

changed only by action of the College Delegate Assembly upon recommendation by the Commission on Colleges. The illustrative and interpretative material under each Standard applies to current situations and is subject to change by the Commission as evidence justifies. A change in illustrative and interpretative material will be effective after announcement to member institutions but will be taken to the College Delegate Assmbly only when that body requests a review of a specific change.

Meeting each Standard is not all that is required for accreditation by and membership in the Southern Association. Assuredly, the Commission is interested in qualifications of faculty, the state of academic freedom, library size, and numerous other educational factors in an institutional operation. It is finally concerned, however, with the totality of the effort, and the atmosphere in which it is carried on. The assessment of this totality overrides smaller considerations as the decision is approached whether or not to confer or to retain membership.

No institution should remain at the minimum level, for the educational endeavor is a dynamic process. A university or college improves and grows in strength or it declines. The Commission tries to foster in each member qualitative improvement. The method used in this effort is the Institutional Self-Study Program. Once in each ten-year period, member universities and colleges are required to make a comprehensive Self-Study which is to be evaluated at the institution by a qualified committee of educators. This is the procedure for reaffirmation of accreditation, but the primary purpose of these visits is the qualitative improvement of each member institu-

tion. The Commission is particularly concerned with the follow-up procedure and insists upon being kept informed as to progress resulting from the experience of self-study. It is hoped that the Self-Study will offer a method by which member institutions may appropriate for themselves the creative vision of their best and most devoted minds, supplemented by objective outside evaluators, thereby furnishing a stimulus to the continued self-development of the academic community.

The maintenance of Standards and participation in the Institutional Self-Study Program are the normal procedures expected of member institutions. The Commission, however, reserves the right to call upon its members from time to time for specific information that may be useful to the membership. It also insists upon the right, or even obligation, to make special studies or investigations of member institutions.

The Commission encourages member institutions to conduct experimental programs. If these programs are at variance with the Standards, the institution is expected to submit the program to the Executive Council of the Commission.

It is assumed that institutions joined in the work of this Commission admit the responsibility they have to each other and to their society. The Commission believes that its philosophy of accreditation logically precludes any attitude of exclusiveness. No institution asking for membership will be refused if it demonstrates its acceptability under the Standards of the Commission.

STANDARD ONE

Purpose

Each institution should clearly define its purpose and should incorporate this definition into a statement which is a pronouncement of its role in the educational world. The institution's integrity is measured not only in terms of its stated purpose, but also in terms of its conscientious endeavor to fulfill this purpose.

It is recognized that the membership consists of a diversity and variety of institutions, ranging from those which have a singleness of purpose to those which are highly complex, from those which are church related to those which are privately or publicly controlled. Each institution, however, should have a well developed and available statement of purpose, not only worthy of higher education in general but also appropriate for its specific educational role. This statement should be clear and concise, and should represent the official concept and practice of the institution.

The formulation of the statement of purpose is a major decision and basic changes should be made only after proper consideration and approval by the governing board. This should not be interpreted, however, as a denial of the right of the faculty to take the initiative in recommending changes. An institution should also examine its statement of purpose periodically. This re-evaluation should include the changes which have taken place internally as well as the changing responsibilities of the institution to its constituency.

All appropriate publications should reflect accurately the institution's statement of purpose. All in-

stitutional programs, including the programs outlined in the official publications, should be designed to achieve the stated purpose. The faculty, financial resources, physical plant, and educational program should be adequate and appropriate to meet the stated purpose of the institution.

STANDARD TWO

Organization and Administration

The administrative organization of an institution of higher learning should bring together its various resources and coordinate them effectively to accomplish its objectives. Although a similar pattern of organization for all member institutions is neither required nor expected, the organizational structure and the administrative processes should be well defined and understood by the entire college community.

The governing board, the term used in the Standards to apply to all governing bodies of institutions of higher education, is the legally constituted body representing the founders, the religious group, or the supporting governmental unit. Members of the governing board should be chosen because of their ability and willingness to serve the institution without selfish motives. The board acts as a body politic and no single member can act in place of the total board. Since the governing board holds institutions in trust, there should be a continuity in membership which will assure stability.

The responsibilities of the governing board include establishing broad institutional policies, securing financial resources to support adequately the institution's program, and selecting the chief administrative

officer and, upon his recommendation, the other administrative officers of the institution. The governing board should not be subject to undue pressures from state officials or other outside political or religious groups; furthermore, the governing board should protect the administration from similar outside pressures.

There should be a clear differentiation between the policy making functions of the governing board and the responsibility of those in charge of administering these policies. General institutional policies may originate within the board or be approved by the board upon the recommendation of the administration. Once these have become the policies of the governing board, the chief administrative officer should be free to implement such policies and to administer the institution within the broad policies laid down by the board.

In addition to the administrative head of the institution, there should be other administrative officials directly responsible to him. The duties of these officers should be well defined and known to the faculty and staff. An effective pattern of organization will contribute to the development of the institution and to general morale. Opportunities for adequate communications throughout the institution are highly important.

Illustrations and Interpretations

1. Descriptive Titles and Terms

The descriptive title as well as the organization of an institution should be appropriate to the purpose, the size, and the complexity of the institution. The indiscriminate use of "unversity" for "college", the

retention of descriptive terms in the title of the institution after the specific function has been dropped or relegated to minor position, or the overly ambitious title not justified by actual practice reflect unfavorably upon an institution. When an institution contemplates changing from a junior college to a senior college or moving to other higher degree levels, it must notify the Executive Secretary of the Commission on Colleges.

2. Governing Boards

Although it is recognized that the title and function of governing boards vary, there should be a clearly identifiable body which is granted and must assume the responsibility for policy. The duties and responsibilities of the board should be clearly defined in an available offical document. This document should also specify the number of members, length of service, rotation policies, organization and committee structure, frequency of meetings, and other pertinent information.

The board should be assured appropriate continuity and independence. Appropriate continuity is normally assured by express provisions for individual terms of adequate length, reasonably staggered; and for removal from office only for cause, by procedures involving due process, desirably by the board itself. The board's independence is normally assured by an expression or an established tradition that the board is independent of outside control in determining policy for the institution. In practice the board has the responsibility to exercise its independent judgment in matters of institutional policy, and should not permit itself to be subject to undue outside pressures.

3. By-Laws and Faculty Manuals

Published by-laws of the board and formalized faculty manuals are strongly recommended. These or similar official documents should contain the following information: the duties and responsibilities of chief administrative officers, the pattern of faculty organization, statements governing tenure and related procedures, and all other policies and regulations that affect the members of the faculty, the members of the administrative staff, or other college personnel.

4. Size of Institutions

Although there is no specific rule as to the minimum size of an institution to be admitted and retained in membership, the enrollment and economic resources should be sufficient to justify an effective educational unit.

5. Institutions as Units

When an institution is a unit of a public or private school system, the administration, management, financial and student accounting, and general operation must be such as to reflect clearly the autonomy of the institution as distinguished from the other units of the school system.

STANDARD THREE

Educational Program

The educational program must be clearly related to the purposes of the institution. This relationship between purpose and program must be demonstrated in policies of admission, content of curricula, requirements for graduation, instructional methods and procedures, and quality of work required of the students.

An institution should have a well-defined and clearly-expressed policy of admission. The admission policy should be related to the educational purpose of the institution and should establish such qualitative and quantitative standards and criteria as are necessary to insure the admission of students who can benefit from the educational program. The policy should require the completion of a secondary school curriculum that lays a sound foundation for a program within the institution.

The curricular offerings of an institution should be clearly and accurately described in published materials. Curricula should be directly related and appropriate to the purpose and objectives of the institution, to the ability and preparation of the students admitted, and to the financial and instructional resources of the institution.

The principal focus of the total institution should be on education of students. Instruction is the basic means to this end. Instructional techniques and policies should express the purposes of the institution, as well as the specific objectives of an individual course. Instruction, to be effective, must be evaluated continuously, and an institution should be able to present evidence that efforts are being made to improve instruction. Concern for improvement of instruction is a mark of institutional vitality.

Illustrations and Interpretations

1. Admission

The admission policy of an institution is usually and properly made at two levels of authority. General policy is established by the governing board normally on recommendation of the administration. The authority to decide the size and character of a stu-

dent body, for example, is the responsibility of the board which determines the overall policy of the total institution. Specific admission policy, however, should be the responsibility of the administration and the faculty, and the agency responsible for administering this policy should be clearly identified. In some cases this agency will be a single administrative officer, or a committee of administrative officers. In other cases the agency will be a committee of the faculty, or a combined committee of administrative officers and members of the faculty. In any case, this agency should be identifiable, recognized, and responsible.

In keeping with this statement of policy, there should be an institutional agency (or agencies in the case of multi-purpose universities which operate separate schools within the university) which properly will be responsible for establishing and maintaining the academic criteria for approved admission. In the case of multi-purpose universities which operate separate schools within the university there should be provision for institution-wide coordination of all admission policies.

The admission policies of an institution should be clearly expressed and openly published, and should explain both general and specific requirements and patterns of secondary school courses where specified.

Students admitted for the first time should have completed an accredited secondary school program which provides a foundation appropriate for college study. A course of study is a total program as well as a concentration in certain subject matter fields; therefore, the admissions agency should examine the applicant's secondary school record for evidence of

his ability to make satisfactory progress in the appropriate disciplines of the institution.

In most cases, completion of an accredited secondary school program means graduation with a diploma. In some cases, however, an admissions agency might justifiably accept a student upon the basis of some other criteria, as, for example, an unusually superior student who has advanced beyond his classmates or a more mature student who has received a reasonable equivalent of secondary preparation in an informal educational program. In all such cases, however, the admissions agency must accept the responsibility of justifying its decision for each acceptance.

The policy with regard to accepting transfer credit should be clearly defined. The quality of work for transferred credits should be in keeping with the quality required of all students of the institution. The student transferring should be officially informed at the time of his admission exactly as to the status of his advanced standing.

The Commission encourages institutions to develop experimental programs for advanced and talented students. If these experiments represent radical departures from the Standards of the Commission, they must be reported to the Executive Secretary of the Commission.

There should be a definite and clearly defined policy regarding readmission of students dismissed or suspended from the college for academic reasons. The readmission of students dismissed under this policy should be consistent with the recognized academic standards of the admissions agency and of the total institution.

There must be a definite procedure in the adminis-

tration of admission policy which shall be followed in the admission of all students. All pertinent documents should be on file and examined by the proper admissions agency before a student is admitted. These documents must include academic records and such other information as is necessary to enable the institution to select students consistent with its admission policy.

It is the responsibility of the institution to assure that its recruiting activities and materials portray the institution accurately and honestly.

Procedures for financial aid and scholarships should be carefully developed and administered in accordance with a consistent policy.

2. Curriculum

There should be a clearly defined process by which the curriculum is established and controlled. This process should recognize the various roles of the governing board, the administration, and the faculty.

The determination of general policy is the responsibility of the governing board. Such matters as the number and types of degrees, the number and nature of the schools or colleges through which the curriculum is administered, and the extent to which the institution should offer graduate work are clearly areas over which the governing board has final jurisdiction. The implementation of the general policy and the determination of specific academic details are the responsibility of the administration and the faculty.

In a single-purpose institution responsibility for curriculum control and administration should be as-

signed to a committee of the faculty and administrative officials. A multi-purpose university might have an agency for each school or college, but should establish a single coordinating agency at the university level. In every case, areas of jurisdiction should be defined, with the channels of communication and control clearly established.

The scope and nature of the curriculum should be related to the stated purposes of the institution and in keeping with the available resources, both financial and academic. Definite efforts should be made to avoid the proliferation of course offerings and degree programs. A small institution with limited resources should not offer a wide variety of major programs and degrees. There should be in each undergraduate school a recognizable common core of subject matter that expresses the educational philosophy of the institution.

In each degree program there should be an orderly and identifiable sequence of courses with an adequate number of hours required in courses above the elementary level and with an appropriate system of prerequisites. The institution should define clearly what is meant by a major or a field of concentration, with stated minimums and maximums of hours required. There should be limitations on the number of hours allowed in specialized areas. These limitations should be related to the degree programs involved. Provision should be made for electives at least at the advanced levels.

The catalog and other published materials concerning institutional offerings should accurately and honestly reflect the academic resources of the institution.

3. Instruction

Effective instruction depends largely upon the general environment in the institution. This environment should be conducive to study and learning. Extra-curricular activities should provide a balance for student life, but should not be allowed to distract the student from his academic pursuits. An institution of higher education should endeavor to create a climate of intellectual curiosity and achievements among its students. The faculty and administration should be able to provide evidence of concern for the general setting in which learning is expected to take place. Such evidence should include efforts to provide for the professional growth of the faculty, provision for extra-curricular seminars and lectures, and other means of creating a stimulating environment.

Programs and courses should be supported by adequate library holdings, instructional materials, and physical facilities. Efficient use of such resources is an indication of concern for effective instruction. It is not enough to show that library, laboratory, and other facilities exist. It should also be possible to demonstrate that they are used effectively in the instructional process.

Instruction should be related to the objectives of each course, the capabilities of the students, and the general institutional standards of quality. The process of instruction should be organized so that students have a clear idea of the aims and the requirements of each course, and the methods of evaluation employed. Experimentation with devices and techniques in the improvement of instruction should be encouraged, but should be subject to critical analysis.

Evaluation of instruction should be related to subject matter, course objectives, and the program of studies. The effectiveness of instruction should be under continuous study. Examinations should be developed with care, and variety in types of measurements should be encouraged. Attempts should be made to evaluate the longer and more general effects of instruction by such devices as comprehensive examinations, the following up of graduates in more advanced programs, the sampling of the opinions of former students, and the use of standardized tests.

Effective instruction is related to class size, the instructional load, and the nature of the course. The size of classes should be governed by the nature and purpose of the course, the adequacy of teaching facilities, the competencies of the teaching staff, and the characteristics of the students involved, as well as the cost of the program. In cases of large classes, appropriate provision should be made for instructional assistance, the division of classes into small sections

meeting at different times, individual conferences, or other devices.

The operating budget of an institution should reflect its concern with instruction. One measure of the quality of the educational program is the proportion of the budget that is allocated directly to instruction.

Since they are definitely related to the effectiveness of instruction, the following sections under the Standard on Faculty should be considered as a part of the evaluation of instruction: academic preparation of faculty, professional growth, teaching loads, and promotions in rank.

STANDARD FOUR

Financial Resources

The financial resources of a college or university determine, in part, the quality of its educational program. Conversely, the quality of the educational program affects the ability of an institution to increase its financial resources. The adequacy of the financial resources of an institution is to be judged in relation to the basic purposes of the institution, the scope of its program, and the number of its students.

The organization of the business structure and the control of financial resources should always reflect the fact that financial resources are tools of the educational enterprise, never the reverse. The business management of an institution should exhibit sound

budgeting and control, proper records, reporting, and auditing.

Financial planning for the future within each educational institution is a condition of wisely guided development. Planning should include specific projections of income from each source, specific plans for major categories of expenditure, and plans for the increase of capital resources.

Illustrations and Interpretations

1. Sources of Income

The sources of income for educational institutions are subject to variation with the fluctuations of the economy. State appropriations, appropriations from other supporting bodies, such as, churches, annual giving, tuition and fees charged to students, and income from endowment are each subject to fluctuation. Private and church-related institutions should have a history of diversity of sources of income in order to indicate stability. Each institution should give evidence of the cultivation and utilization of each source of income so that the combination is adequate to its needs.

Endowments are highly important to non-tax supported institutions. Although income from endowment is subject to change with fluctuations in the economy, an institution having available income from this source strengthens the base of stability.

2. Stability of Income

Both public and private colleges shall exhibit stability of income as measured by at least three years'

history. The amount shall be measured as income per student rather than in terms of gross amount of income.

3. Organization for the Proper Administration of Financial Resources

All business and financial functions of the institution should be centralized, preferably under a single business officer responsible to the president. The more important functions which should be performed by the chief business officer and his staff include assistance to the president in the preparation of the institutional budget, control of the budget, the establishment and operation of an appropriate system of accounting and financial reporting, the supervision of the operation and maintenance of physical plant, the procurement of supplies and equipment, the control of inventories, the financial management of auxiliary enterprises, and the receipt, custody, and disbursement of funds belonging to the institution. In accordance with policies carefully developed by the board of control, the endowment funds and other investments should be administered by an appropriate officer or committee designated by that board. On all of these matters the president should report regularly to the governing board.

The chief business officer should be appointed by the governing board, upon the nomination of the president of the institution. Because of the numerous and varied responsibilities centered in the business

office, selection of this officer is an important factor in the effective business management of the institution. He should be a well educated person, experienced in handling educational business affairs. He should realize that the purpose of his office is to serve the institution and to assist in the furtherance of its educational program.

There should be a well conceived organization plan assigning responsibilities of the various activities which together comprise the business office of the institution. The complexity of the required organization will depend upon the size of the institution and the volume of transactions of a business or a financial nature.

The chief business officer should be one of the principal administrative officers, along with those in charge of academic administration.

4. Educational Expenditures

In judging the adequacy of financial operations, basic educational and general expenditures shall be used. These expenditures will include, for the fiscal year, general administration and general expense, instruction and departmental research, libraries, and operation and maintenance of the physical plant. In computing the expenditure per student, the total basic educational and general expenditure is divided by the number of equivalent fulltime students at the close of registration of the fall term.

The minimum expenditure, based upon the highest degree offered and the full-time equivalent enrollment of the institution, shall be as follows:

Level of Offerings and Enrollment	Minimum Expenditures
Junior Colleges and Other Two-Year Institutions	
0-200	$145,000
201-500	$145,000 plus $675 for every student in excess of 200
501-1000	$347,500 plus $575 for every student in excess of 500
1001 & Over	$635,000 plus $475 for every student in excess of 1000
Bachelor's Level Institutions	
0-200	$270,000
201-500	$270,000 plus $1150 for every student in excess of 200
501-1000	$615,000 plus $1000 for every student in excess of 500
1001 & Over	$1,115,000 plus $850 for every student in excess of 1000
Master's Level Institutions	
0-200	$300,000
201-500	$300,000 plus $1200 for every student in excess of 200
501-1000	$660,000 plus $1050 for every student in excess of 500
1001 & Over	$1,185,000 plus $900 for every student in excess of 1000
Doctor's Level Institutions	
0-200	$350,000
201-500	$350,000 plus $1300 for every student in excess of 200
501-1000	$740,000 plus $1150 for every student in excess of 500
1001 & Over	$1,315,000 plus $1000 for every student in excess of 1000

5. Budget Preparation

The budget is a statement of estimated income and expenditures for a fixed period of time, usually the fiscal year of the institution. The budget expresses in terms of dollars the educational program of the institution. Regardless of the size of the institution, an annual budget in appropriate detail is essential to proper operations. Since the annual budget is an expression of an educational program, its preparation and execution must be preceded by educational planning. It follows then that the instructional budget, for the most part, should be recommended by academic officers or deans, working closely with department heads and appropriate members of the faculty. Similarly, for other budget areas, recommendations should be made by the appropriate officers of the institution. The business officer assists in assembling and compiling the budget requests, prepares income estimates, and serves as a chief adviser to the president in the financial determination of budgetary allocations. The budget is presented by the president to the trustees for final approval. The review by the trustees should generally be limited to matters of broad policy and not matters involved with details. Preferably, forms should be devised by the institution which are used for the preparation of the budget and are made available to the various divisions of the institution which participate in the budget-making process.

6. Budget Control

After the budget has been approved by the president and adopted by the governing board, there should be a system of control. It is only in this way that plans of the governing board and the president

with respect to the budget may be carried out, and it is only in this way that the institution can operate according to a preconceived plan. Periodically, the accounting officer should render interim budget statements to department heads for their guidance and assistance in staying within budgetary allocations. Budgetary control is an administrative function, not a board function.

7. The Relation of an Institution to External Budgetary Control

An educational institution can neither conduct a sound educational program if its operational procedures are set by legslative act, nor can it be properly administered if an agency outside the institution exercises undue and restrictive financial control. Once funds have been appropriated for an institution (either for building construction or operations) budget making, establishing priorities, and control of expenditures should be entirely within the institution under the jurisdiction of the governing board subject to general policy provisions enacted by the legislature and to the commitments represented through budgetary requests by the institution. State financial and administrative officials adversely affect the educational and academic process when they exercise specific and detailed control over matters which can and should be handled within the institution. Recognition by educational representatives of the responsibility of state officials for the post audit function and the general enforcement of reasonable budgetary law is imperative; however, the educational function of an institution must not be controlled through the use of budgetary techniques or controls by financial officials outside the institution.

8. Accounting, Reporting, and Auditing

The accounting system should follow the generally accepted principles of institutional accounting as they appear in Volume I, **College and University Business Administration,** published by The American Council on Education. An essential principle of the system of accounting is that the information derived therefrom can be reliably compared with information obtained from the records of other institutions. Desirable uniformity in reports can be approached through the establishment of uniform classifications as recommended in this volume.

The financial statement is a logical extension of the accounting system. If the accounting records are adequate, the preparation of the financial statement is a matter of reclassifying the information supplied by the books of record. Periodic written financial reports to the president are necessary for both the large and the small institution.

An annual audit with a certified report shall be made by competent accountants who are not directly connected with the institution. The accountants should be selected at least partially on the basis of their experience and knowledge of institutional accounting.

Complementing the accounting system and the external audit, there should be a well organized program of internal audit and control.

9. The Management of Income

There should be a suitable organization and adequate procedures for the management of all funds belonging to or owed to the institution. Normally, the cashiering function should be centralized in the business office and there should be a carefully work-

ed out system for the receipt, deposit, and safe-guarding of institutional funds. All persons handling institutional funds should be bonded.

10. Purchasing and Control of Storerooms

For the institution which is large enough to justify a separate office for purchasing, as well as for the institution which is so small that its buying can be done by the chief business officer, it is essential to efficient operations that purchasing be done centrally. A logical adjunct of the purchasing function is a system of well organized storerooms, such as those for physical plant supplies, library supplies, and office supplies. It is advisable that there be established an inventory system on all of the equipment owned by the institution.

STANDARD FIVE

Faculty

The selection, development, and retention of a competent faculty at all academic levels is of major importance to all institutions. The relationship between faculty objectives and institutional purposes determines in large measure the effectiveness of the total educational program. The institution should make known its purposes and objectives to prospective faculty members, as well as its expectations of them. This should be done in order that objectives sought by the faculty will be in harmony with the institutional purposes.

Provision should be made for adequate faculty participation in the development of academic policies. The organization should provide regular and open channels of communication among faculty and between faculty and administration, and should be broadly representative of the faculty as a whole.

The academic preparation and experience of the faculty are significant factors in determining the quality of a college or university and should be such as to further the purposes of the institution. The continuous professional growth of all members of the faculty should be encouraged, and the institution should assist members of the faculty to further their professional development.

If faculty members are to be effective teachers, they must have reasonable security. The institution should, therefore, provide faculty members with adequate salaries and a well planned program of benefits to enable them to live in dignity and comfort. The institution should provide salaries and benefits sufficient to enable it to attract and retain a faculty commensurate with the achievement of the institutional purposes. The faculty salaries and the program of benefits should be regularly and frequently re-examined to keep them current with changing economic and social conditions. The institution should further implement the security of the faculty with policies and procedures providing faculty tenure and safeguards for academic freedom.

The total responsibility of each member of the faculty to the institution should be determined in such a way that he can make his maximum contribution toward carrying out the purposes of the institution and, at the same time, enhance his own professional development.

In the final analysis, the performance of the faculty determines the academic quality of the institution. Each institution should provide for continuing evaluation of faculty performance and for equitable recognition of faculty effectiveness.

Illustrations and Interpretations

1. Recruitment and Selection

Specific assignments of responsibility should exist for identifyng, appraising, negotiating with, and selecting new faculty members. Criteria for prospective faculty members should be established which are consonant with the purposes of the institution and with continuous advancement in the academic quality of the institution. These criteria should reflect appropriate minimums of previous preparation and experience for the duties to be undertaken.

The institution should make an active and painstaking search for suitable faculty members and provide for adequate travel and other investigative expense for the appropriate officials. The search should include accumulation of ample information on each candidate considered.

Final authority for approval and selection of faculty members may vary widely, but the selection process should accord adequate weight to recommendations of various officials held responsible for the academic program. Ordinarily, selection should be made after appropriate interviews with the candidate.

The institution should make periodic evaluations of its recruitment and selection procedures and policies, and utilize the findings of such evaluations to modify institutional policies and conditions of faculty employment. The faculty salary scale should be flexible enough to permit employment and retention of individuals needed to upgrade the faculty.

2. Faculty Organization

The faculty of all institutions should be so organized that their business may be properly conducted. Faculty membership should be clearly defined.

In small institutions the faculty should be organized as a whole, but in complex institutions it may be by divisions, schools, or colleges. In complex institutions there should be an organization such as a senate or council which meets regularly, in order that the faculty may have an opportunity to deal with the academic concerns of the total institution.

The jurisdiction of the faculty in academic affairs should be clearly defined and should provide adequate scope for the exercise of faculty responsibility. The faculty should be concerned primarily with fundamental academic policies.

Provisions for open and regular channels of communication between faculties and administration should be established.

The rules and regulations relating to faculty organization, by-laws, and responsibilities should be recorded and accessible to all concerned.

3. Academic Preparation of Faculty

All teaching faculty members should have advanced degrees (master's degree specialization in the fields in which they teach). Any exception must be justified by special competence in the field of knowledge.

In all colleges at least forty per cent of the teaching faculty should possess professional preparation equivalent to two years of advanced study beyond the bachelor's degree. In senior colleges at least sixty

per cent of the teaching faculty should possess professional preparation equivalent to three years of advanced study beyond the bachelor's degree and at least thirty per cent should hold the earned doctor's degree.

In junior colleges in any department composed of as many as four faculty members, at least one should possess professional preparation equivalent to three years of advanced study beyond the bachelor's degree. In senior colleges in any department or division composed of four or more faculty members, at least twenty-five per cent should have an earned doctorate. In any department or division offering a major or field of concentration, at least one member or twenty-five per cent, whichever is greater, should hold the earned doctorate in the area of concentration.

In the creative or applied arts or in any highly specialized professional or technical field, evidence of professional competency in the area of specialization is recognized and may be acceptable in lieu of advanced degrees.

The experience of the faculty within the institution should be such that it reveals a balanced total distribution among various accomplishments, as they relate to the objectives of the institution. Included among these should be successful teaching as evidenced by student accomplishment measured by data derived from examination or test scores, success in graduate schools, or similar sources; productive scholarship and research; effective participation in professional associations and scholarly societies; and contributions to improvement of the educational program of the institution.

4. Professional Growth

The academic environment of a college or university and the continuous professional growth of its faculty are inextricably bound together. The administration and the faculty should cooperate in providing opportunity for this professional growth. The institution should encourage professional development by affording opportunities, such as, leaves of absence for study and research, research facilities, membership in professional organizations, attendance at professional meetings and workshops, and inservice training. The general tone of the institution should be one in which the individual faculty member is expected and encouraged to exercise initiative in identifying and meeting his own professional growth needs.

5. Financial Security

Providing faculty salaries which reflect the importance and worth of college teaching in American society should always be an institutional goal. The salary scale should show steady progress toward this goal. In addition, the institution should have as an immediate goal the establishing of a salary structure which will place it in a reasonably competitive relationship to other colleges and universities. Intensive effort should be made to improve the salary structure if it is short of this immediate goal.

A program of benefits, including a sound retirement plan in which the institution participates and which protects the faculty members' equity, should be maintained.

Any institution in which faculty salaries are substantially below the average of comparable institu-

tions must show that steps are being taken to improve its salary scale; otherwise, it must explain this discrepancy. An institution may wish to determine these averages from national publications, such as, **Higher Education: Planning and Management Data,** published annually by the Office of Education of the U. S. Department of Health, Education, and Welfare, or from statistics which the Commission may be able to supply.

6. Tenure and Academic Freedom

Tenure regulations for an institution should be established by the governing board in accordance with generally accepted practices and should be clearly stated in writing to the faculty. Each faculty member should be given written notice when he achieves tenure under the institution's policies. Retention of a faculty member who has not been given tenure calls for special justification.

The policies and procedures for the termination of appointments should be stated in writing and should be in accord with commonly accepted practices. Termination of non-tenure members of the teaching staff should be made only after adequate notice has been given. Termination of the appointments of those members of the staff with tenure should be made only for cause, and the individual should be fully protected with the proper safeguards.

The institution should adopt and record a statement of the principles of academic freedom to which it subscribes, and within these principles faculty members should be secure in their freedom of teaching and investigation and in their right to partcipate as responsible citizens in community activities. Nothing in this statement of principles is intended to

protect an incompetent or negligent faculty member or to prevent the institution from making proper efforts to evaluate the work of each instructor. The tone of the institution, however, should be conducive of high faculty morale and a strong sense of faculty freedom and initiative.

7. Teaching Loads

The components of the work load of faculty members, and the relative weights assigned to each component, will vary from institution to institution, among divisions within a single institution, and between individual faculty members within a division. Each institution should have a concrete plan for the determination and distribution of work loads. It should demonstrate the plan's equity and reasonableness in relationship to what the individual faculty member is expected to do, and to the maintenance of scholastic quality in the teaching component of his total responsibility.

Faculty work load distributions for an institution should reflect its avowed purposes. If one of the purposes of an institution is the accomplishment of significant research, for example, it will be expected to show that ample time within its gross faculty work load is provided for research. An institution offering graduate degrees will also be expected to show sufficient time within its gross faculty work load as being available for faculty engagement in research.

In reporting its faculty work loads for purposes of this Standard each institution must show that a realistic amount of time is available in the sum-total of faculty work loads to care for the duties associated with institutional operation; that is, committee as-

signments, participation in administration, executive responsibility for institutional and divisional functions, duties of public and alumni relations, and assigned supervision of student activities.

In calculating the time value of the student instruction load assigned to each faculty member certain factors should be considered including the number of class contact hours, the number of preparations, the weekly student load, available help (such as secretarial, teaching assistants and grading machines), and the amount of time engaged in research. The institution's plan for the determination and distribution of work loads should be subjected to periodic appraisal and revision.

The institution should have suitable policies to protect against the assumption of outside responsibilities by the faculty member which might cause encroachments upon either the quality or quantity of the work he is employed to perform by the institution.

8. Criteria and Procedures for Evaluation

Each institution should have a statement of the criteria against which performance of the indivdual faculty member will be evaluated. These criteria may vary from unit to unit, and between positions, but in total they should be consonant with the purposes of the institution. The criteria should be known and accepted by both the evaluating officials and the faculty, and be readily available to the faculty. Periodic appraisal using established criteria is essential and the institutional organization should establish definite and stated responsibility for both the criteria and procedures to be used in making such appraisals.

9. Promotions in Rank

In institutions in which faculty rank is employed, criteria for promotion based on factors in addition to years of experience should be adopted and understood by all concerned. Promotion procedures and policies should be such as to exercise a positive influence upon the morale and professional development of the faculty. They should reflect regard for rank as a recognition of quality of performance, and not as a substitute for salary.

10. Salary and other Recognitions

The institution should have established criteria and procedures for giving salary increments and other types of recognition.

STANDARD SIX

Library

The library is a vital instrument of instruction, not only in general education but also in the cultural development of students and faculty. The library should be administered as part of the academic program. This administration should include a well-trained professional staff with representatives of the teaching faculty acting in an advisory capacity. The staff should be alert to new curricular developments and needs. Services should be evaluated regularly to observe the library's effectiveness through the nature and extent of its use.

The book and periodical collection should, by quality, size, and nature, support and stimulate the entire educational program. Substantially stronger holdings should be required for graduate and research programs. The collections should be housed in a well-lighted, ventilated, sound-conditioned, and

adequately equipped building, with a seating capacity sufficient to accommodate the needs of the students and faculty. The library should be open adequate and appropriate hours, and the books and periodicals, preferably in open stacks, should be organized for easy access, use, and preservation.

Illustrations and Interpretations

1. Supplementary Document

In conjunction with the Library Standard the following should be used as a reference: **Library Statistics of Colleges and Universities, Institutional Data,** (U. S. Department of Health, Education, and Welfare, Office of Education, Library Services Branch). In using this reference, institutional authorities should consider it a serious danger signal if the library regularly falls in the lowest quarter of any of the categories analyzed.

2. Committee

There should be a proper academic committee concerned for the library which should include the librarian.

3. Records

Pertinent records shall be kept of acquisitions and library use.

4. Budget

The library budget shall cover the purchase, processing, and servicing of the collection of printed library materials. Special services or special materials (such as recordings, films, other audio-visual aids) demanded of and furnished by the library will require funds in addition to regular budgetary allotments.

5. Staff

The library should be adequately staffed by qualified librarians and skilled non-professional personnel, under the direction of a chief librarian who ranks with comparable administrative officers. Professional staff members should be accorded proper recognition, proportionate to their qualifications, experience, and duties. This recognition may consist of faculty rank and status, where appropriate, including comparable salaries and privileges.

The minimum number of professionl librarians required is the number necessary to assume responsibility for administration, readers' services, and technical processes. The marks of a professional librarian are to be taken to include a graduate library degree from a recognized institution, participation in professional library organizations, and performance of duties of a professional nature. The non-professional staff should relieve librarians of work that is essentially clerical.

6. Collections

Faculty members are responsible for participation in book selection. The collections should be frequently tested against recent bibliographies and other standard guides. Continuous weeding should be followed, with the advice of faculty concerned. An institution should be able to show that its library holdings reflect the purposes of the institution, the curricula offered, and the courses taught.

7. Buildings and Equipment

Proper library seating accommodations are needed for at least one-fourth of the largest number of students on the campus at any one period of the day.

In areas of graduate study and research, carrels which may be individually assigned should be provided. Conference rooms and seminars are highly desirable, especially in libraries serving graduate schools.

8. Hours Open

Two and four year colleges should remain open for service a minimum of sixty hours per week, and universities eighty hours per week.

9. Service

Every possible barrier, whether physical or psychological, between patron and book should be eliminated. Any unusual demands on the library for service outside normal academic expectations should be evaluated and, if necessary, receive special support. Evaluation of services may be measured by study of statistical records or by spot checks and studies. The faculty should be invited, at periodic intervals, to criticize and comment upon library service.

STANDARD SEVEN

Student Personnel

All institutional members should have and should express a continuing concern for the total welfare of each student including his physical and mental health, development of capacities and talents, establishment of relationships with other persons, and motivation for progress in intellectual understanding. The institution should seek to know as much as possible about the background of its students and should keep this information current and appropriately confidential.

The institution should provide activities which not only will motivate the students toward significant academic achievement, but also will establish meaningful associations among students, faculty, and the administration and will furnish ample opportunities for the development of numerous individual talents.

In order to maintain quality in student personnel work, the student's records must be accurate, clear, and complete. The records should be readily accessible to those responsible for student guidance. These data, incorporating pertinent information from precollege life, should extend through graduation and into alumni life.

Knowledge of and concern for the student's physical and mental health are of major importance. Effective guidance requires careful evaluation of abilities, interests, and plans. The program of orientation should establish an individual and personal relationship between the entering student and the institution as a whole—that is, its curricula, its range of extracurricular activities, and its general educational objectives.

The value of student activities may be measured by the extent to which these activities contribute to the educational program of the institution. The entire program of student activities should be held under college supervision. Participation of students in such activities should be restricted to those who meet satisfactory academic standards of work. The athletic program of the college shall be organized under faculty supervision and it should meet ethical standards, as well as the prescribed regulations of the athletic conference or association of which the institution may be a member.

Illustrations and Interpretations

1. Administration

Careful evaluation should be made to determine the degree to which the administrative organization of the personnel program supports, contributes to, or detracts from the purpose and objectives of the institution. The size and location of the institution will also affect the pattern of organization for the administration of the student personnel program.

In order for the student personnel program to make its contribution to the total educational program, it requires the recognition, acceptance, and support of the administration and the faculty. Well trained, qualified people should be administratively responsible for the student personnel program and should enjoy comparable status to other university or college administrators.

2. Academic and Personal Records

Institutions shall have adequate student records but should be careful not to maintain unnecessary duplications. The registrar or other appropriate institutional official shall keep files of admissions and matriculation information, scholarship records, transcripts, and other essential data. Some of these records should be duplicated and other pertinent records should be developed and maintained by appropriate academic deans, directors, department heads, and any others charged with the responsibility of counseling.

3. Orientation

The orientation program should be flexible, challenging and current, and should include information that is meaningful and helpful to a student entering

the academic experience. The program should be periodically evaluated.

4. Counseling

The institution, regardless of size, should make provisions for individual attention to students. Experenced counselors should be available to the student in reference to his academic, personal, and vocational problems. In some cases counseling in these areas may be shared by various administrators or faculty. In every case there should be a well developed program, which is periodically evaluated, and for which there is a clear designation of responsibility.

5. Health

The size, location, and nature of an institution will partly determine the extent to which it should provide for medical care. An adequate health record, made before or upon entrance, shall be a part of every student's file.

6. Athletics

In all institutions conducting formal programs of intercollegiate and intramural athletics these activities shall be a part of the total educational program of the institution, and the administration and the faculty shall have the responsibility for and control of all such activities. Admission procedures and requirements, including academic standards and curricular requirements for athletes, shall be the same as for other students.

Funds used to support all athletic programs shall be fully controlled by the administration and shall be reflected in an annual audit of the institution's

financial records. Funds designed for instructional purposes shall not be diverted to the intercollegiate athletic program.

A program of intercollegiate and intramural athletics should provide a variety of opportunities for students who desire participation. Coaches and staff members employed in the athletic program shall have sufficient academic training and orientation to contribute to the educational objectives of the institution. Regular appraisal of the athletic program should be made to determine its value to the educational program of the institution.

7. Alumni

Every institution should keep current and accurate records of the addresses, occupations, and accomplishments of alumni. The effectiveness of an institution is revealed through the attitudes and achievements of those who have attended the institution. The relationship between the institution and the alumni should be one which encourages each alumnus to continue his interest in and to participate in the development of the institution.

STANDARD EIGHT

Physical Plant

The physical facilities, including buildings, equipment, and campus, should be designed and maintained to serve the needs of the institution in relation to its stated purposes. There should be sufficient campus area to provide adequately for buildings and such activities as are related to the educational program of the institution. The physical facilities should be used as efficiently as possible in keeping with

the educational program of the institution and the students it serves. The architectural design and appearance of the physical plant should be in harmony as far as practicable, and should be aesthetically compatible to the educational mission of the institution. A master plan for campus development should be maintained.

Illustrations and Interpretations

1. Existing Plant Facilities

Each institution should establish with the assistance of competent consultants a master plan for the existing campus. A topographical map should be a part of this plan.

Sufficient rooms for classes of various sizes should be available to meet the instructional needs of the institution. These should be properly lighted and adequately equipped, heated, and ventilated for their purposes and their uses.

Thorough space utilization studies should be made to establish actual need before the addition of new plant facilities. Classrooms, laboratories, and other facilities should be properly scheduled for maximum utilization. Special programs requiring special facilities should not be offered unless the appropriate facilities are available.

Periodic studies should be made of the existing plant for the purpose of anticipating necessary renovation and eliminating as far as possible, all hazards, including fire. Competent consultants should be utilized to determine the value of buildings and equipment for adequate insurance coverage.

Adequate landscaping should be utilized to divide the campus into attractive and useful areas. Satis-

factory parking space should be available, and wherever practicable traffic should be banned from pedestrian areas.

2. Expansion of Plant Facilities

Expansion should be considered as a long range program so that plant development can proceed in an orderly sequence, thus eliminating many problems before they occur. The long range plan should include purchase of needed additional property prior to the actual demands for growth and expansion.

The campus development program should indicate space and function of campus activities in terms of long range planning. The location and accessibility of dormitories, dining halls, library, classrooms, and other facilities should be carefully considered and become a part of the master plan. As far as feasible, the long range plan should determine the general design of new buildings so that architectural harmony can be maintained.

It is strongly recommended that administrative officers and faculty members who are to occupy or direct the activities in new buildings be consulted during the planning stages. For example, librarians should be consulted in planning libraries and other professional people should be consulted in planning buildings used for technical purposes.

In the planning and construction of classroom buildings, consideration should be given to changing instructional methods which may be reflected in changes of classroom size, in the use of teaching devices, or both.

3. Maintenance

The duties and responsibilities for plant and cam-

pus maintenance should be clearly defined and specifically assigned. There should also be clear lines of responsibility for campus security, fire protection, and traffic safety.

In the interest of efficiency and economy the cost of maintenance and housekeeping should be evaluated and compared with the data and experience of other institutions. High standards of housekeeping, preventive maintenance, cleanliness, and care of grounds should be observed.

When they are a part of the institutional operations, utilities such as water, power, and sewerage should be properly and efficiently maintained and these systems should be adequate and capable of expansion.

STANDARD NINE

Special Activities

Many institutions have developed a variety of supplemental and special educational programs in an attempt to fulfill their stated objectives and their responsibilities to their constituents. Such programs may be identified as special activities relative to branches, centers, extension classes, correspondence and home study, foreign travel and study, conferences, institutes, short courses, workshops, special evening classes, special summer sessions, and television and radio.

The Standards of the College Delegate Assembly apply directly to all programs involving academic credit; in addition, specific criteria and definitions may be designed for certain programs assigned to the category of special activities. It shall be the re-

sponsibility of the parent institution to justify all special activities (for credit or not for credit) within the framework of its stated purposes and objectves. All special activities programs must be integral parts of the total educational program of the parent institution.

The accreditation of the institution is affected by the quality of each program or course. Special activities shall always be critically evaluated and judged by the College Delegate Assembly as a part of its function in granting or reaffirming accreditation of the total institution.

Illustrations and Interpretations

1. Branch

A branch is a degree-granting division or unit of an institution, located in a geographical setting separated from the parent institution, and authorized by charter for a stated purpose in relation to the parent institution and the area served. A branch has planned programs leading to undergraduate, graduate, or professional degrees which are granted by or in the name of the parent institution.

A branch shall have such programs, financial resources, library, and physical facilities that it may be evaluated essentially as an autonomous institution in terms of the Standards of the College Delegate Assembly, although it need not request individual membership in the Southern Association of Colleges and Schools.

Its organization shall include a full-time chief administrative officer and other administrative officers as are needed for such areas as finance, academic affairs, and student affairs. The chief officer shall be directly responsible to the head of the parent insti-

tution who shall determine to what extent control or direction will be exercised by the faculty and administration of the parent institution.

A branch shall have a majority of full-time faculty. It shall have sufficient financial resources, appropriated directly by the parent institution, or through income from tuition, or through either one or a combination of these, to operate independently and to carry out its educational program.

For the purpose of identification, the parent institution must indicate on its transcripts the name of the campus on which the courses or degrees are completed.

2. Center

A center is a non-degree-granting division or unit of an institution, located in a geographical setting separated from the parent institution and established for a stated purpose in relation to the parent institution and to the area served. The center shall have a pattern or sequence of courses which leads to terminal programs or degrees on the parent campus or at other degree-granting institutions.

The center shall operate under the supervision of an administrative officer responsible to the parent institution. Its admission requirements and procedures, courses to be offered, and faculty shall have the approval and be under supervision of the appropriate departments on the home campus. Each course offered shall have physical facilities (including space and equipment) and library holdings equivalent to those required for the same course on the home campus. Academic requirements and instructional quality shall be equivalent to those maintained at the parent campus.

For purpose of identification, the parent institution must indicate on its transcripts the name of the center where courses are completed.

3. Extension

A course taught by extension is one offered in an off-campus temporary setting, with students and instructor in class attendance. The content and quality of each course, the admission requirements, the preparation of the faculty, and the adequacy of physical facilities should be recognized as college policy matters and as reflecting the integrity of the institution. Care should be exercised in the selection of courses for this type of program. Courses requiring laboratories or extended library study should not be approved unless facilities equal to those expected on the home campus are available.

Courses taken by extension must be so identified on transcripts of student records. Although the specific amount of degree credit which may be earned through extension classes is decided by each institution, it may not exceed one-third of the total hours required for a degree.

4. Correspondence and Home Study

The institution should safeguard the quality of correspondence courses as vigilantly as it safeguards on-campus instruction in regular classes and, in addition, it should take the necessary steps to offset any weaknesses resulting from this method of instruction. Academic standards in correspondence courses shall be comparable with standards in on-campus classes as shown by tests and examinations requiring comparable achievement for degree credit.

Courses taken by correspondence and home study must be so identified on transcripts of student re-

cords. Although the specific amount of degree credit which may be earned through correspondence and home study is decided by each institution, it may not exceed one-fourth of the total hours required for a degree.

5. Foreign Travel and Study

Credit shall not be permitted for travel **per se**, nor shall credit be allowed for commercial programs designed by commercial firms. Degree credit shall be granted only for residence abroad involving an academic program supplemented by seminars, readings, reports, or similar academic exercises based on the same criteria for credit as independent study on the campus. Special attention should be directed to the quality of the academic programs at the foreign institution or institutions. The amount of credit to be awarded should be fully determined by the faculty in advance of the travel.

Courses taken by foreign travel and study must be so identified on transcripts of student records. Although the specific amount of degree credit which may be earned through foreign travel and study is decided by each institution, it may not exceed one-fourth of the total hours required for a degree.

6. Conferences, Institutes, Short Courses Workshops, Special Evening Classes, and Special Summer Sessions

The amount of credit for each course shall be determined through the regular channels and committees of the institution. The institution should safeguard the quality of these programs as vigilantly as it safeguards instruction in regular classes. Academic standards shall be comparable with standards in

regular classes as shown by tests and examinations requiring comparable achievement for degree credit.

The designation of evening classes in this category does not refer to evening classes which are an integral part of the curriculum and an extension of the day schedule. Summer sessions that represent equivalents of the regular session should be considered part of the general curriculum and program.

For purposes of identification, it is recommended that the course title or description carry the designation of type, such as, institute, workshop, conference. Although the specific amount of degree credit which may be earned in this category is decided by each institution, it may not exceed one-fourth of the total hours required for a degree.

7. Television and Radio

Television, in this category, pertains to open-circuit television instruction which originates off the campus or which is transmitted from the campus to outside receivers. It does not pertain to closed-circuit television courses.

The amount of credit for each course shall be determined through the regular channels and committees of the institution. The institution should safeguard the quality of these programs as vigilantly as it safeguards instruction in regular classes. Academic standards shall be comparable with standards in regular classes as shown by tests and examinations requiring comparable achievements for degree credit.

Courses taken by television and radio must be so identified on transcripts of student records. Although the specific amount of degree credit which may be earned by television and radio is decided by each in-

stitution, it may not exceed one-fourth of the total hours required for a degree.

8. Credit Limitations

At least one-fourth of the credits required for a degree from the institution must be earned in residence at the home campus or at a branch of the institution. No more than one-half of the credit requirements for an undergraduate degree may be fulfilled through an accumulation of credits in categories three through seven above. For limitations on graduate credits in the categories of Special Activities see the Standard for Graduate Program.

STANDARD TEN

Graduate Program

A graduate program comprises a course of study beyond the baccalaureate level usually leading to an advanced degree. An institution inaugurating, continuing, or expanding a graduate program should have curricula and resources available beyond those provided for the undergraduate college. Since the quality and excellence of graduate instruction should be of constant concern to every institution offering graduate work, it is essential that the provisions for graduate instruction should include an adequate administrative organization, a competent faculty in the major and supporting fields, and library and laboratory facilities consonant with the programs offered. An institution contemplating the inauguration of a program at a higher degree level should inform the Executive Secretary of the Commission at least one year in advance and arrange for a preliminary advisory study by the Commission before undertaking the program.

The graduate tradition of an institution is based on the careful selection and the stability of staff, teaching quality and scholarly productivity on the part of the faculty, and well-defined principles and practices governing the selection and retention of students. It is important that graduate work be characterized by flexibility, the use of unique abilities, and the production of well trained graduates. The value of graduate work is to be judged by the quality of the product; consequently, a program of continuous evaluation of graduate instruction should be undertaken by an institution so as to maintain and improve the qualitative standards of its work.

A distinction between undergraduate and graduate work should be observed. Although this does not entail a complete separation of these fields of instruction, courses or curricula classified as graduate necessarily involve research relative to such programs. There are many divergent conceptions of research. It is not a mere gathering and organizing of facts and opinions. Research is a discriminating activity of well informed minds concerned with the discovery of new truth, with the critical examination of the evidential basis of knowledge that is accepted as true and believed to be true, with the correction of error, and with the application of both old and new truth to the uses of mankind. Research and training in research are fundamental in all graduate programs.

Graduate work should not be undertaken unless the academic integrity of the undergraduate program can be maintained and financial support for superimposed graduate studies is unusually strong. Institutions embarking upon new programs or expanding existing programs should appraise critically

the resources at their disposal and study the effects of graduate work on the undergraduate program. Graduate education is expensive and institutions engaged in it should take into consideration national estimates of average per student cost in this field of instruction.

Illustrations and Interpretations

General

1. Administrative Organization

Institutional organization should recognize the graduate program as having a separate identity. All policies and regulations affecting graduate curricula and work leading to graduate degrees should be formulated by a graduate faculty, or graduate council, or similar body representing those concerned with graduate instruction. Within this framework there should be provided a well-defined mechanism for determining qualifications for membership in the graduate faculty. Some arrangement or procedure also should exist within the graduate organization by which graduate programs can be reviewed, approved, and re-evaluated.

2. Graduate Faculty

The members of a graduate faculty shall hold the highest terminal earned degrees or the clear equivalent in their fields, shall have avowed interest in graduate instruction, shall have experience in teaching advanced subjects, and shall be productive scholars.

3. Library, Laboratory, and Other Facilities

Institutions offering an advanced degree only at the master's level shall have library and laboratory

resources adequate for the curricula offered and for the introduction of the student to research in each subject offered in the program. For institutions offering graduate instruction beyond the master's degree, and including doctoral programs, these resources should be distinguished in excellence and should provide means for the accomplishment of graduate enterprises of major importance.

The library shall be an instrumentality of research with a book and periodical collection providing students with the means of attaining a mastery of the literature, history, and research materials of their subjects. In the scientific fields, laboratories shall be equipped for special experimentation. In the provision of adequate resources there should be continuous cooperation among the institution's budgetary authorities, the library administration, and the graduate school and faculty. The fact and character of this cooperation can be significant criteria for the appraisal of institutions.

4. Admission and Retention of Students

The maintenance of the ideal of excellence in graduate study carries with it the obligation to select and admit, retain and encourage, as student candidates only those qualified to accomplish work of graduate character. In addition to the critical appraisal of academic transcripts and other formal credentials submitted by the applicant as evidence of fitness for admission, the practice is commended that applicants take and attain satisfactory scores on the Graduate Record Examinations or similar tests. The admission policy of an institution is one of the criteria for accreditation.

Equally important are the principles governing the retention of students. If, prior to admission to candidacy for a graduate degree, or if, during residence as a degree candidate, a student does not maintain a consistently satisfactory level of achievement, he should be advised to discontinue graduate work. Admission to candidacy for a graduate degree should be based on a critical appraisal of the student's academic performance and his scholarly potential.

To maintain the integrity of graduate work in extension courses, the admission of students, quality of instruction, library, and laboratory facilities shall be in conformity with on-campus practices. The transfer of credit to degree programs from recognized institutions and from extension courses shall be restricted so that residence requirements will not be diminished. The unity of the student's program, the intellectual stimulation derived from contacts with his fellow graduate students, and the advantages inherent in close association with the faculty can be best achieved by observing this principle.

Master's Degree

1. Admission

The applicant must possess a bachelor's degree from a recognized institution of higher learning. If the undergraduate institution is not accredited by a regional accrediting agency, additional criteria should be used to safeguard the admission process. The applicant shall present a transcript which, for unconditional admission, shall show a sufficient and satisfactory undergraduate preparation in the major field.

2. Candidacy

Admission to candidacy for the degree should not take place until the student has demonstrated ability (during a semester or quarter of residence or an equivalent period of residence in summer terms) to accomplish work of a graduate character.

3. Program Requirements

The candidate must complete twenty-four or thirty semester hours of graduate work in courses with grades representing a satisfactory level of achievement. In a program requiring a thesis, a minimum of twenty-four semester hours of credit shall be earned exclusive of thesis. In a program in which no thesis is required, there shall be a minimum of thirty semester hours. At least one-half of the courses included for the student's degree program shall be those designated as exclusively graduate and the remainder of the degree courses shall be open only to upper division and graduate students. At least one-half of the credits offered for the degree shall be in a single field of concentration.

For the degree of master of arts and master of science, the requirements of a modern foreign language and a thesis are highly desirable. For the master's degree of a professional nature, other requirements might logically be substituted for a modern foreign language and a thesis. For example, the master of arts in teaching may not use the same criteria but will have a program designed to meet its specific purpose.

4. Credits by Transfer, Extension Study, or Correspondence

Each institution shall develop its own regulations

with regard to transfer and extension credit within the limitations specified below.

Except in cases of planned coordinated inter-institutional programs, not more than six semester hours of graduate credit taken on campus or through extension in a different but recognized institution may be transferred and credited to the master's degree.

Graduate credit not exceeding twelve semester hours may be accepted from extension study in a program under the direction of the degree-granting institution, but such credit may not be applied to reduce on-campus residence.

Not more than a total of twelve semester hours of extension and transferred graduate credit may be accepted towards the master's degree.

No credits toward a graduate degree may be obtained by correspondence study.

5. Minimum Residence

At least eighteen semester hours or the equivalent must be completed on the campus of the degree-granting institution.

6. Comprehensive Examination

A comprehensive examination, either oral or written or both, shall be passed by the candidate covering at least the field of concentration and the thesis, if a thesis is required.

Doctor's Degrees

1. Admission

Unqualified admission to the Graduate School of possible and prospective candidates shall anticipate

in a formal sense the same minimum standard as candidates for the master's degree; namely, the possession by the applicant of a bachelor's degree from a recognized institution and the presentation of a transcript showing a sufficient undergraduate preparation for advanced work in both major and minor fields. The undergraduate preparation shall be broad enough to provide an adequate foundation for graduate work. Adequate preparation shall be attested by the transcript of formal courses and credits and this evidence should be supplemented by an acceptable report on the Graduate Rcord Examinations or comparable tests. Major departments should be encouraged to establish screening examinations of their own for their information and guidance, as well as for a basis of their recommendations for the admission of students to the Graduate School.

2. Acceptance of Credits in Post-Baccalaureate Programs.

The courses of study in pursuance of candidacy for the master's degree, or the first year of graduate study, if properly planned, may be applied in partial fulfillment of requirements for the doctoral degree.

3. The First Two Years of Graduate Study

The courses of study should be planned by a committee appointed by the dean of the Graduate School, or by the departmental committee on graduate instruction of the major department. This plan should aim at giving the student a mastery of the major field; and, in case a minor is required, the plan should enable the student to make sufficient progress in satisfaction of that requirement to keep the program as a whole in balance. During these two years,

the student with faculty advice should have selected a topic for the dissertation and should have made sufficient exploration in the bibliography and materials of the subject to be able to demonstrate the feasibility of the project. By the end of this period any foreign language requirement should have been satisfied and the qualifying examination passed.

4. Course Requirements

The aim of the doctoral program should be to afford instruction and guidance leading to the mastery of a major field. Although independent study on the part of the student is essential to every doctoral candidacy, formal course work is of indisputable value; it reduces the labor of a student; it should bring the student into scholarly relationship with members of the graduate faculty and demonstrate how accepted knowledge of a subject is evidentially supported. Specific course requirements, as deemed necessary, should be stipulated by the student's advisory committee. When the minor is required—which is a supporting subject, selected and constructed for precise purposes, and which is composed of courses—a specific course requirement is proper.

5. Major and Minor

It should be the responsibility and obligation of the departments established within the Graduate School to define the fields in which majors may be offered within their respective areas of instruction. The general content and scope of these majors should be subject to the confirmation of the graduate council or similar body. It is to be understood that the limits and scope of the majors so defined are subject to expansion to satisfy the interests of students; but

the majors should be so thoughtfully framed or reframed that contraction of the limits and scope should not be permitted in individual programs. The unswerving integrity of the major is to be commended. Nothing in the foregoing is to be interpreted as opposition to interdepartmental majors. In the construction of majors, departments and Graduate Schools should avoid the diffuseness that would vitiate specialization and the compression that would cause over-specialization. The widespread practice of requiring a minor in a department allied to the major, to the dissertation subject, or the interest of the candidate is recommended. The minor courses, if required, should be selected within a related but distinct field. If minor courses from more than one department are proposed, the selection of these courses should be subject to the approval of the Graduate School.

6. The Requirement of Foreign Languages

During the first two graduate years and preferably during the first year, the prospective candidate for a doctor's degree which has language requirements should satisfactorily complete such requirements. These languages are thought of as instruments of research and as a means of affording continuing access to materials and literature of foreign culture and scholarships; and their use in these relationships should be exercised as a matter of common practice. This reading knowledge shall be tested in adequate examinations by the pertinent language departments or by a foreign language committee. These examinations should test the ability of the student to read selected passages from the literature of the major subject. The French, German, and Russian lang-

uages are endorsed as those most generally useful. With the approval of the Graduate School, the department of the major may, however, on the grounds of greater pertinence to the student's interests and program of study, recommend any modern foreign language as a substitute for one of these, but approval of such substitution rests with the Graduate School. All language requirements must have been satisfied prior to the preliminary or qualifying examination and prior to admission to candidacy for the degree.

Although a reading knowledge of two foreign languages is usually required for the Doctor of Philosophy degree, statistics and other tools of research are sometimes accepted in lieu of one or both language requirements in other doctoral programs.

7. The Preliminary or Qualifying Examination

At least one academic year prior to the time when the degree is expected to be conferred and ordinarily not earlier than the accomplishment of two full years of graduate work, the student should undertake the preliminary or qualifying examination. On the basis of this examination, the student is to be recommended or not for admission to candidacy. This examination should be designed to fulfill several purposes. An examining committee, appointed especially for each candidate, should inquire into the feasibilty of the dissertation project. The examination should cover subjects and courses of both major and minor fields and should be a rigid test of the student's competence and knowledge. It should be an inquiry of the student's mastery of bibliography and of his powers of bibliographical criticism; further, it should give particular attention to subjects or courses taken

in other institutions for which transfer credit is proposed. The examination should afford the examiners the basis for constructive recommendations as to subsequent programs of studies, if any, to be undertaken by the student. When the student passes this examination and all other conditions are fulfilled, the examiners shall recommend to the Graduate School admission to candidacy. Credit for the preliminary examination shall not be transferable.

8. Admission to Candidacy

The formal act of admission to candidacy shall be a function of the Graduate School. This should be a serious act of responsibility, and the administrative authorities of the Graduate School should be able to attest to the fulfillment of all conditions attached to the act of admission.

9. Transfer of Credit

Credit for work accomplished in recognized institutions is transferable or not, according to each institution's policy. Credit for work that might be transferable may be determined before or after admission to candidacy. In any case a definite part of either the preliminary examination or the final oral examination should be devoted to the testing of the student's mastery of the subjects involved and should be the method of validating such credit.

10. Residence Requirements

The minimum residence requirement for the doctoral degree shall be three academic years beyond the bachelor's degree or their equivalent in shorter units of academic residence. The student should be required to spend at least one full academic year beyond the first year of graduate study in continuous

residence. The transfer work from a recognized graduate school should carry with it transfer of residence credit. Residence credit, however, may not be transferred unless there is also transfer of course work. Graduate residence credit may not therefore be established in fulfillment of requirements for the doctor's degree unless the graduate work accomplished in such periods of residence is embodied in the accepted program leading to the doctor's degree.

11. The Dissertation

The dissertation, required of all candidates for the doctoral degree, should be concerned with a well defined problem lending itself to a study of reasonable length, and it should represent a synthesis of materials more than a compilation of facts. It is recommended that the dissertation be prepared under the direction of a special committee whose supervision should be such that the dissertation will be of reasonable scope. It should comply with the rules of form prescribed by the Graduate School. The institutions conferring the degrees may require the dissertation to be printed for publication or submitted in typewritten form. In the spirit of safeguarding the interests of the student in this form of literary property, consideration should be given to copyrighting.

12. The Final Examination

There shall be a final oral examination which should be directed primarily to the defense of the dissertation. This examination should be administered by a committee appointed by the dean of the Graduate School.

STANDARD ELEVEN

Research

As long as colleges and universities have been established, members of their faculties have made significant contributions through the discovery of new knowledge. The zest for discovery of truths as well as for the communication of knowledge is an essential characteristic of an atmosphere conducive to the development of scholarship.

For adequate support of his individual research program, the teacher-investigator must frequently seek funds from outside sources. In recent years ever-increasing financial support for research has been made available through private and governmental agencies. Such contractual or sponsored research has become an integral part of the activities of colleges and universities today.

Policies relative to research should insure conformity of this activity to the stated purposes of the institution, provide an appropriate balance between research and instruction, and guarantee control of administration of the research by the institution. The investigator's freedom in research, including direction and communication of results, should be preserved.

In using funds from contracts, grants, and contributions in support of research, the institution should not become dependent upon that portion allowed for indirect or overhead cost in support of its regular operating budget.

Illustrations and Interpretations

1. Administration

Although many advantages accrue to institutions from research support possibilities through private and governmental agencies, problems often arise through research contract and grant procedures and administration. As a means of dealing with these problems, the administration of research should provide for conformity of research activities to the stated purposes of the institution.

Responsibility for contractual research should be related to departmental administration. If departmental administration fails to provide leadership, lack of morale and lack of coordination of activities can result.

The institution should have a clear policy relative to the division of responsibility between research and other activities. Certainly each institution may set up its own policy, but it seems essential that some policy be established and that all concerned conform to the stated policy.

The institution should develop definite policies relative to summer salaries paid from contract and grant funds, to salary supplements during the regular academic year, and to research consultative services undertaken by faculty members. These policies may well vary from institution to institution, but again a clearly understood policy is needed.

Administration of research contracts and grants should attempt to minimize the amounts of time utilized by the teacher-investigator in seeking support for and in administering individual research contract and grant programs. Much time can be

saved him if the administrative organization within the institution provides relief for as much responsibility as possible in administrative matters.

2. Institutional Control

In accepting funds from outside agencies, the institution must maintain control of its policies relative to research and instruction. Many agencies attach rather stringent regulations directing and limiting the character of research if they provide funds to support it. The rapid growth in acquisition of research grants from and contracts with outside agencies can endanger the institutional control of its activities unless this prerogative of the college or university is carefully guarded.

Continuity of support for general institutional research activities should not be endangered through the acquisition of research contracts and grants. Grants are given and contracts are made for limited lengths of time. When and if the institution becomes dependent, even partially, upon such funds for faculty salaries or graduate fellowship and assistantship stipends in support of graduate programs, termination of grants or contracts may mean the entire educational program, as well as the research activities, would be seriously jeopardized.

3. Primacy of Teaching Obligations

Discharging responsibility to granting agencies must not reduce teaching effectiveness on the part of the teacher-investigator. The faculty member receiving support from without the university for his research program naturally feels responsibility to the granting agency to accomplish the research ex-

pected, but teaching obligations must not be neglected in order that this responsibility be discharged.

4. Faculty Morale

Care should be exercised that support from outside agencies in some areas within the college or university does not affect adversely the faculty morale in other areas through development of jealousies. If teaching loads are reduced so that obligations to outside agencies may be satisfied, resentment on the part of persons in other areas, or even in the same area, can be a significant basis for low morale. The administrative officers of the institution should provide research support and time for those who are not in a position to seek grants.

5. Expenditure of Research Funds

An institution has the prerogative of developing its own policy of purchasing procedures and, in general, purchases with contract funds should conform to the established procedural policy. Most granting agencies state clearly that purchasing procedures using grant funds must conform to the institution's policies; however, it is not essential that policies governing expenditures of research funds be the same as those governing expenditures of general funds.

6. Freedom of Investigation

The elements inherent in undertaking "classified" research should not tend to destroy the principles of freedom of investigation and of reporting results. This freedom has always been a sacred prerogative of faculties of educational institutions of higher learning, whether privately or publicly supported.

APPENDIX "I"

ODESSA COLLEGE

September 18, 1969

TO: All Faculty Members

FROM: Dr. Jack Rodgers, President

1. The attached proposed statement of academic freedom and responsibility has been prepared by a committee of members of the Board of Regents and faculty members: Regents Harding, Elliott, and Dooley; faculty Jack Hendrix, Mike Willson, and Mrs. Gail Pool.

2. The Committee has suggested that you read the statement; if you have comments, register these with your departmental chairman by Thursday afternoon; chairmen will, in turn, list reactions in writing and turn them in to my office.

3. The statement is essentially the same as that proposed by the Coordinating Board.

ODESSA COLLEGE

September 18, 1968

(PROPOSED) STATEMENT OF ACADEMIC FREEDOM AND RESPONSIBILITY

1. Institutions of higher education are conducted for the common good. The common good depends upon a free search for truth and its free expression. Hence, it is essential that the faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish his conclusions concerning the significance of evidence that he considers relevant. **He must be free from the corrosive fear that others, inside or outside the college community, because their vision may differ from his own, may threaten his professional career or the material benefits accruing from it.**

2. The concept of academic freedom must be accompanied by an equally demanding concept of **responsibility, shared by governing boards,** administrators, and faculty members.

3. Each faculty member is entitled to full freedom in the classroom in discussing the subject which he teaches, taking into consideration that he teaches undergraduate students and is guided by a course syllabus. **Each faculty member is also a citizen of his nation, state and community; and when he speaks, writes or acts as such, must be free from institutional censorship or discipline.**

4. However, the exercise of professional integrity by a faculty member includes recognition that the public will judge his profession and his institution by his statements. Therefore, he should strive to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to avoid creating the impression that he speaks or acts for his college when he speaks or acts as a private person.

5. **The fundamental responsibilities** of a faculty member as a teacher and scholar **include a maintenance of competence** in his field of specialization and the exhibition of such competence in lectures, discussions or publications.

6. A faculty member should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to his subject field.

7. **A faculty member has the responsibility to provide due notice of his intention to interrupt or terminate institutional services.**

8. **The essential responsibilities** of **governing boards** and **administrators are set forth in the Standards for Colleges,** adopted by the Southern Association of Colleges and Schools, as updated and revised.

STANDARD TWO

ORGANIZATION AND ADMINISTRATION

Copied from
Standards of The College Delegate Assembly
of The Southern Association of Colleges and Schools
(pp. 5-6)

The administrative organization of an institution of higher learning should bring together its various resources and coordinate them effectively to accomplish its objectives. Although a similar pattern of organization for all member institutions is neither required nor expected, the organizational structure and the administrative processes should be well defined and understood by the entire college community.

The governing board, the term used in the Standards to apply to all governing bodies of institutions of higher education, is the legally constituted body representing the founders, the religious group, or the supporting governmental unit. Members of the governing board should be chosen because of their ability and willingness to serve the institution without selfish motives. The board acts as a body politic and no single member can act in place of the total board. Since the governing board holds institutions in trust, there should be a continuity in membership which will assure stability.

The responsibilities of the governing board include establishing broad institutional policies, securing

financial resources to support adequately the institution's program, and selecting the chief administrative officer and, upon his recommendation, the other administrative officers of the institution. The governing board should not be subject to undue pressures from state officials or other outside political or religious groups; furthermore, the govening board should protect the administration from similar outside pressures.

There should be a clear differentiation between the policy making functions of the governing board and the responsibility of those of the governing board terng these policies. General institutional policies may originate within the board or be approved by the board upon the recommendation of the administration. Once these have become the policies of the governing board, the chief administrative officer should be free to implement such policies and to administer the institution within the broad policies laid down by the board.

In addition to the administrative head of the institution, there should be other administrative officials directly responsible to him. The duties of these officers should be well defined and known to the faculty and staff. An effective pattern of organization will contribute to the development of the institution and to general morale. Opportunities for adequate communications throughout the institution are highly important.

ARGUMENT AND SUBMISSION

Extract from the Minutes of April 15, 1970.

ROBERT P. SINDERMANN, for himself and for all others similarly situated

No. 28372

versus

CHARLES R. PERRY, et al

On this day this cause was called, and after argument by Richard J. Clarkson, Esq., for appellant, and W. O. Shafer, Esq., for appellees, was submitted to the Court.

* * * * *

IN THE

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 28372

ROBERT P. SINDERMANN, for himself and others similarly situated,
Plaintiff-Appellant,

versus

CHARLES R. PERRY, et al.,
Defendants-Appelles.

Appeal from the United States District Court for the Western District of Texas

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(August 10, 1970)

Before WISDOM, AINSWORTH and CLARK, Circuit Judges

CLARK, Circuit Judge: The court below disposed of this case by summary judgment but because we find that this case presents issues of constitutional law, the longest way around now proves to be the shortest way through the thicket. The Board of Regents of Odessa Junior College voted not to renew the employment contract of Professor Robert P. Sindermann. Sindermann filed suit in the district court alleging that the action of the Regents in refusing to offer him a new term of employment was based sole-

ly on his exercise of First and Fourteenth Amendment rights of expression, association and petition and alleging violations of due process in connection with this refusal. Finding the contract rights of the parties clear, the court granted a motion of defendants for summary judgment. Shortly after the summary judgment was appealed, this court decided **Pred v. Bd. of Public Instruction,** 415 F.2d 851 (5th Cir. 1969), which classifies the rights of persons circumstanced such as plaintiff as constitutional rather than contractual. **Pred** aligned this court with the 4th Circuit[1] and against the 10th Circuit[2] in this as yet unresolved conflict between circuits. This new development in decisional law, coming as it did after the decision of the court below, renders that court's summary judgment inappropriate and erroneous. We reverse for further development of the facts.

BACKGROUND:

Professor Sindermann became a member of the Odessa College faculty in September 1965, after previous college teaching experience. By a succession of one-year contracts he remained a faculty member until the end of the 1968-69 school year. On May 19, 1969, the college president notified Sindermann that the Regents had voted to approve the president's recommendation not to renew his contract for 1969-70. Sixteen days later Sindermann filed the present action and contemporaneously with the instigation of litigation, requested that he be given a hearing by college authorities. Apparently no such hearing has been afforded.

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[1]Johnson v. Branch, 364 F.2d 177 (4th Cir. en banc, 1966), cert. denied 385 U.S. 1003, 87 S.Ct. 706, 17 L.Ed.2d 542 (1967).

[2]Jones v. Hopper, 410 F.2d 1323 (10th Cir. en banc, 1969), cert. denied ____ U.S. ____, 90 S.Ct. 1111, ____ L.Ed. 2d ____ (1970)

During the 1969-70 school term no member of the Odessa College faculty had any formal assurance of continuation of employment beyond the present school term.[3]

Shortly before official notice of the decision not to renew plaintiff's contract, the college issued an 11-page press release documenting the deterioration of its relationship with plaintiff. The highlights are reflected in this chronology from that document. The validity of Professor Sindermann's work with Odessa College was recognized by his nomination to be co-chairman of the Social Science Department with an increase in pay. As soon as he became co-chairman, he began to circularize lengthy letters to the members of his department. This resulted in his being dropped as co-chairman in the Fall of 1968 but with no corresponding reduction in salary. In February 1969 Sindermann was elected president of the Texas Junior College Teachers Association.[4] Sindermann accepted this office without consultation with any administrative officer of Odessa College and immediately requested student clerical help, a reduction in teaching load and time off during winter months to visit other junior colleges, which had not been true with former faculty members who served in this same office. Sindermann also aligned himself with

[3]The official Faculty Guide published by the college contained the following paragraph:

"Teacher Tenure: Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work."

[4]The Faculty Guide indicated complete administration approval of this organization in the following language:

"Professional Memberships: Odessa College faculty members pride themselves on one hundred percent membership each year in the Texas State Teachers Association and Texas Junior College Teachers Association."

a group known as "The Committee to Elevate Odessa College", a group seeking to raise Odessa College to a 4-year status—a move officially opposed by the Board of Regents. Plaintiff's name appeared as sponsoring a newspaper advertisement ridiculing the position taken by the Board of Regents on Odessa College's 4-year status.[5]

On at least four occasions Sindermann requested permission from college officials to absent himself from the campus and his teaching duties in order to testify before committees of the Texas legislature on a bill relating to academic freedom and tenure. These requests were each refused but Professor Sindermann nevertheless attended the committee hearings. The press release concluded by quoting a telegram from Sindermann to a Senator which, in part, stated: I have been fired from Odessa College for attempting to testify on S.B. 512." It noted however that Sindermann had not been officially advised that his contract would not be renewed. The letter of "official" notification of non-renewal shortly followed the press release.

PLEADINGS AND PROCEEDINGS:

Sindermann's complaint alleged that his contract was not renewed in order to retaliate against him for expressions of opinion, that he was a competent classroom teacher, that he had not been offered an impartial hearing in connection with the non-renewal of his contract, that the action taken against him had a chilling effect on other professors at Odessa College,

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[5]Sindermann disclaimed any connection with the advertisement but the press release held, that his "guilt by association" could not be rejected because he allied himself with the Committee to Elevate Odessa College.

and that he had been damaged in his professional reputation and standing. He sought compensatory and punitive damages and attorneys fees, a declaratory judgment adjudicating that the Regents' action violated his constitutional rights and that he was entitled to a hearing under suggested procedural guidelines, and a mandatory injunction requiring his reinstatement for the 1969-70 college year at the same level of responsibility and function he had previously held. He named as defendants the members of the Board of Regents and the college president, individually and in their official capacity. The Board of Regents moved to dismiss the action insofar as they were sued in their official capacity. All defendants moved for summary judgment.

Only three affidavits were filed in the course of the pleadings. All were by the plaintiff, Sindermann. The first supported his motion for injunction, the second opposed summary judgment, the third verified the authenticity of the exhibits to his complaint. After denying the motion to dismiss,[6] the court granted defendants' moton for summary judgment on the basis of the findings and conclusions set out in the margin.[7]

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[6] This action was correct. Harkless v. Sweeny Independent School District, ____ F.2d ____ (5th Cir. 1970) (No. 28188, June 2, 1970).

[7] Findings:

"I. Plaintiff's tenure of employment ended May 31, 1969.

"II. Odessa Junior College has no tenure system which fact was known to the Plaintiff at the time he entered into his original contract with the college.

"III. After the termination of his contract of employment the Defendant college owed no obligation to the Plaintiff."

Conclusions:

"I. Plaintiff has no cause of action against the Defendants since his contract of employment terminated May 31, 1969, and Odessa Junior College has not adopted the tenure system.

"II. Plaintiff has no contract with the Defendant college.

"III. Plaintiff has no right which would require Defendants to execute a contract with Plaintiff, or to employ Plaintiff.

"IV. Defendants have not violated any constitutional rights of the Plaintiff."

SUMMARY JUDGMENT:

Pred v. Bd. of Public Instruction, supra, invalidates the basic legal premise of the Court's summary judgment. There we said:

> "Equally unpersuasive is the related argument that since there is no constitutional right to public employment, school officials only allowed these teachers' contracts to expire, and thus they cannot be liable for a violation of any right protected by § 1983. But in the posture of this case this misconceives the whole thrust of their claim. The right sought to be vindicated is not a contractual one, nor could it be since no **right** to reemployment existed. What is at stake is the vindication of constitutional rights — the right not to be punished by the State or to suffer retaliation at its hand because a public employee persists in the exercise of First Amendment rights." (415 F.2d at 856)

See also Orr v. Thorpe, ___ F.2d ___ (5th Cir. 1970) (No. 27674, June 10, 1970).

In a legally analogous situation, the Supreme Court has made it clear that even the broad discretion vested in a State government to fix municipal boundaries cannot be used as an instrument to circumvent constitutionally protected rights and that where constitutional wrongs are perpetrated in the guise of fixing city limits, the breadth of the legislative power being exercised provides no insulation from judicial correction. **Gomillion v. Lightfoot,** 364 U.S. 339, 81 S.Ct. 125, 5L.Ed.2d 110 (1960).

The controlling effect of **Pred** is in nowise lessened by the circumstances in the case at bar that Sindermann requested permission to be absent from his

teaching duties to exercise constitutional rights, that such permission was refused and that he deliberately disobeyed administrative directions. The inquiry still comes back to be whether the college refused to renew the teaching contract on an impermissible basis —as a reprisal for the exercise of constitutionally protected rights. We reject the sophistry which would recognize that the college could not withhold renewal of Sindermann's contract because of his association with the Committee to Elevate Odessa College or because of his exercise of a reasonable right to petition the legislature by attending committee hearings but, at the same time, recognize a right in the college administration to direct him not to exercise these rights then refuse to renew his contract for disobedience of their orders. **Compare Sheldon v. Tucker,** 364 U.S. 479, 81 S.Ct. 247, 5L.Ed.2d 231 (1960).

However, a valid distinction might be drawn between a dismissal on bare bones pleadings as was involved in the **Pred,** and a disposition on summary judgment as in the case sub judice. This Court has affirmed the use of summary judgment to dispose of constitutional issues, **Hawthorne v. United States,** 115 F.2d 805 (5th Cir. 1940), see also **Dawkins v. Green,** 285 F.2d 772 (N.D. Fla. 1968), but this form of disposition is often inappropriate in cases involving issues of far-flung import. **Compare Hall v. Garson,** ___ F.2d ___ (5th Cir. 1970) (No. 29690, July 22, 1970) Part II B; **Kennedy v. Silas Mason Co.,** 334 U.S. 249, 68 S.Ct. 1031, 92 L.Ed. 1347 (1948); and **Dispatch, Inc. v. City of Erie,** 364 F.2d 539 (3rd Cir. 1966). It was totally inappropriate in the case at bar, where the only affidavits on which summary judgment was based were submitted by the plaintiff and where there was a clear offer to

prove facts constituting a constitutional claim. **Whitaker v. Coleman,** 115 F.2d 305 (5th Cir. 1940). Summary judgment should be granted only when the truth is clear, where the basic facts are undisputed and the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts. **Cole v. Chevron Chemical Co.,** ___ F.2d ___ (5th Cir. 1970) (No. 29032, June 10, 1970). While there was no dispute about the facts underlying Sindermann's contract status with Odessa College, the truth of his constituional position was far from clear. The basic facts, as well as the material inferences to be drawn therefrom, were in total dispute. Summary judgment was improper. We explicitly note that we deal only with procedures and not with the merits. The remand for factual explication is made with no intimation whatsoever as to what outcome such further development should produce.

ACADEMIC HEARING PROCEDURES:

Since the case must be remanded, it is appropriate that we comment on plaintiff's contention that the college denied him procedural due process by simply announcing that he would not be rehired and failing or refusing to give him a hearing.

Before specifying what procedural devices ought to be available to Professor Sindermann at the collegiate level, a determination must be made as to whether the teacher involved has tenure or an expectancy of re-employment under the policies and practices of the institution. **See Ferguson v. Thomas,** ___ F.2d ___ (5th Cir. 1970) (No. 28227, June 23, 1970) and **Greene v. Howard University,** 412 F.2d

1128 (D.C. Cir. 1969). The factual development of the record in its present posture is too scanty for this court to decide whether this second alternative applies to Sindermann.[8] After the facts are developed, if the trial court should conclude that Sindermann did have an expectancy of reemployment, then the applicable notice and hearing standards are now established in **Ferguson.**

On the other hand, if the court resolves that Sindermann did not have an expectancy of reemployment which would require the college to show cause for the decision not to renew his contract, a different procedure would be indicated. In such a situation, upon receipt of notice that a new contract will not be offered the teacher must bear the burden both of initiating the proceedings and of proving that a wrong has been done by the collegiate action in not rehiring him. It is incumbent upon such a teacher, not the college, to shoulder these responsibilities because the college may base its decision not to reemploy a teacher without tenure or a contractual expectancy of reemployment upon any reason or upon no reason at all. **Bomar v. Keyes,** 162 F.2d 136 (2nd Cir. 1947). **Cf. Smith v. Board of Regents,** ___ F.2d ___ (5th Cir. 1970) (No. 28159, May 26, 1970). A requirement such as plaintiff suggests, that a college must always assign a cause for not renewing the contract of any teacher on its staff, would have the legal effect of improperly denying to colleges free-

[8]The "Teacher Tenure" statement, supra n. 3, creates at least some doubt in this court's mind as to whether this institution might have failed in its apparent attempt to secure the best of both worlds.—attracting teachers who think they will be free from annual reemployment pressures, while at the same time retaining broad discretion to make or refuse a new contract each year. The Faculty Guide also sets out "Criteria for Retention of Teaching Personnel" which add to the uncertainty.

dom of contract to employ personnel on a probationary basis or under annual contracts which are unfettered by any reemployment obligation. Every teacher would thus be granted substantial tenure rights by court edict. Courts do not make contracts for colleges or teachers any more than for any other litigants.

Upon receipt of the college's notice that it will not renew his contract, if a teacher determines to assert that such non-renewal is really a form of punishment for his exercise of constitutional rights or otherwise constitutes some actionable wrong, the teacher should notify the institution with reasonable promptness of his claim in sufficient detail to fairly enable the institution to show any error that may exist and request a hearing. Upon the receipt of this notice and request the institution should constitute a tribunal to conduct such a hearing that both possesses some academic expertise and has an apparent impartiality toward the charges.

This hearing must include the right to produce witnesses and evidence and the right to confront and cross-examine witnesses produced by the opposition.[9] Of course the whole point of the academic process is lost unless the hearing affords a meaningful opportunity to develop a record which can, if necessary, later form a substantial part of any court proceeding — a transcript which should demonstrate that the academic tribunal based its decision upon matters

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[9] In Mack v. Florida State Board of Dentistry, _____ F.2d _____ (5th Cir. 1970) (No. 28085, July 7, 1970), we noted that while administrative hearings are not to be conducted with the formalities and strictures of a court trial, they should not be allowed to degenerate into an ungoverned confrontion. The virtues of having a presiding officer with legal training if the parties are represented by counsel, is equally apropos here.

adduced before it. This is not so just to accommodate court procedures. More importantly, it is the process best calculated to reach a fair accord and to settle the problems which have arisen between the parties. After all, the candid settlement of differences that arise between men is the essence of civil justice for which we strive.

It has been indicated to this court that the college administration was served with this court's subpoena before it received any request for a hearing from Professor Sindermann. If this be correct, then he may have "jumped the gun" in filing the present litigation. School-constituted review bodies are the most appropriate forums for initially determining issues of this type, both for the convenience of the parties and in order to bring academic expertise to bear in resolving the nice issues of administrative discipline, teacher competence and school policy, which so frequently must be balanced in reaching a proper determination.

Except in cases where the teacher or the institution refuses to follow these suggested procedures or the positions of the parties are such as to demonstrate that following such procedures would be a needless waste of time (a finding which the trial court may, on remand, deem appropriate in this case), a court whose jurisdiction is invoked ordinarily should stay its hand until the matter has been made ripe for court adjudication by allowing such procedures to function.[10] If at the conclusion of the academic processes the matter must still come before the court for review, the presentation there arrives buttressed with

[10]See Ferguson, supra, and Stevenson v. Board of Education, ____ F.2d ____ (5th Cir. 1970) (No. 28875, May 26, 1970).

the record developed before the academic agency, which is entitled to great weight.

CONCLUSION.

This action was brought as a class action on behalf of Professor Sindermann and "on behalf of many of the Odessa Junior College faculty members too numerous to join herein, who have been intimidated and harassed by the Defendants, or their agents, for expressing their opinions, and on behalf of many Odessa Junior College faculty members too numerous to join herein, who have become fearful and reluctant to express their opinions because of the conduct of the Defendants as described herein." However, no party before this Court has raised the propriety or impropriety of the class action aspects of this suit under Rule 23, Fed. R. Civ. P. See C. Wright, Federal Courts, § 72, pp. 306-317 (2d ed. 1970); also **Carpenter v. Davis,** ___ F.2d ___ (5th Cir. 1970) (No. 27686, April 9, 1970) and **Eisen v. Carlisle & Jacquelin,** 391 F.2d 555 (2nd Cir. 1968). We therefore make no adjudication whatever on this question.

The summary judgment is reversed and the cause is remanded for futher proceedings consistent with this opinion.

REVERSED AND REMANDED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
OCTOBER TERM, 1969
NO. 28372

D. C. Docket No P-69-CA-54

ROBERT P. SINDERMANN, for himself and others similarly situated,
Plaintiff-Appellant,

versus

CHARLES R. PERRY, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Texas

Before WISDOM, AINSWORTH and CLARK, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court.

It is further ordered that defendants-appellees pay to the plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

August 10, 1970

Issued As Mandate: October 14, 1970.

(Number and Title Omitted. Filed Jun. 11, 1969)

(September 9, 1970)

ON PETITION FOR REHEARING

Before WISDOM, AINSWORTH and CLARK, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

(Number and Title Omitted. Filed Jun. 11, 1969)

I, Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages contain a full, true and complete copy of the following papers:

Mimeograph Appendix, Argument and Submission, Opinion of the Court, Judgment and Order Denying Petition for Rehearing; in the above cause in this Court as full, true and complete as the originals of the same now remain in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United State Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this date.

EDWARD W. WADSWORTH
Clerk of the United States Court
of Appeals for the Fifth Circuit.

By Claudette Staiger
Deputy Clerk

DATE: November 11, 1970

Supreme Court of the United States

No. 952--------, *October Term, 1970*

Charles R. Perry, et al.,

Petitioners,

v.

Robert P. Sindermann, etc.

ORDER ALLOWING CERTIORARI. Filed June 14----------, 1971.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth----------Circuit is granted.